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In the matter of: :
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COMPULSORY LICENSE FOR MAKING :
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AND DISTRIBUTING PHONORECORDS; : CRT Docket No. 80-2
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ROYALTY ADJUSTMENT PROCEEDING :
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(MECHANICAL) :
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2033 K Street, N.W.
Room 538
Washington, D.C.

Wednesday, July 16, 1980

The hearing in the above-entitled matter commenced
at 10:07 a.m., pursuant to notice.

BEFORE:

MARY LOU BURG, Chairman

THOMAS C. BRENNAN, Commissioner

DOUGLAS E. COULTER, Commissioner

CLARENCE L. JAMES, JR., Commissioner

FRANCES GARCIA, Commissioner

APPEARANCES:

FREDERICK GREENMAN, JR., Attorney-at-Law
Counsel for AGAC

RICHARD M. ZUCKERMAN, Attorney-at-Law
NANCY KILSON, Attorney-at-Law
Counsel for NMPA

JAMES F. FITZPATRICK, Attorney-at-Law
CARY H. SHERMAN, Attorney-at-Law
JILL B. DEAL, Attorney-at-Law
Counsel for RIAA

C O N T E N T S

WITNESS: Direct Cross Recross Redirect

GENE NORMAN

By Mr. Zuckerman 4

By Mr. Greenman 35

JUGGY GAYLES

By Ms. Deal 71

JW1-1

P R O C E E D I N G S

CHAIRMAN BURG: We will come to order and it is good to be back in this room again, isn't it. Mr. Norman was on the stand. We were at the point where Mr. Zuckerman was still in the midst of cross examination.

Whereupon,

GENE NORMAN

resumed the stand, and having been first duly sworn, was further examined and testified as follows:

CONTINUED CROSS EXAMINATION

BY MR. ZUCKERMAN:

Q. Mr. Norman, when we adjourned yesterday we were going through the question of how difficult it would be to compute what the royalty would be under the NMPA proposal of a royalty of six percent of suggested retail list price for a number of your records.

I believe during your direct testimony you had stated that you thought it was a major task. I am putting in front of you the complete pile of records that you brought before the Tribunal yesterday. And I might note that I had hoped that I would have them last night and I was going to compute what the royalties would be but Mr. Sherman had a need for them so I didn't get them until a few minutes ago this morning.

But I want to see just how difficult the task of computing the royalties would be. So why don't we take them one by

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1 one and we'll see how long it takes.

2 What is the first one on the pile?

3 A. It's called "Greatest Science Fiction Hits."

4 Q. How many songs appear on that record?

5 A. Eighteen songs.

6 Q. What is the suggested retail list price?

7 A. \$7.98.

8 Q. \$7.98, 18 songs. Now, are there any songs less than
9 one minute in length?

10 A. No.

11 Q. Are there any songs more than five minutes in length?

12 A. No.

13 Q. So then under the NMPA proposal, each one would get
14 a one unit share; is that correct?

15 A. I believe so, yes.

16 Q. So, six percent of \$7.98 is 48 cents and 118 times
17 48 cents equals 2.67 cents. Mr. Sherman can verify the
18 calculation.

19 So that's what the royalty would be for each song on
20 that album; is that correct?

21 A. I believe so.

22 Q. What is the current statutory royalty under the com-
23 pulsory license system?

24 A. 2.3 -- 2.75.

25 Q. 2.75 cents?

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A. Right.

Q. So that album like the "Very Best of Mom and Dads" which we discussed yesterday would have a statutory royalty under the NMPA proposal of less than the current statutory royalty?

A. Yes, but I have probably five albums like this in a catalogue of 250.

Q. Well, I'm going through all of the albums that you brought with you and so far of the albums that you brought with you, we have two which have a lower royalty under the NMPA proposal than under the current royalty.

What's the next album in the pile?

A. This is Clifton Schenier.

Q. What's the suggested retail list price of that?

A. \$7.98.

Q. How many songs appear on that album?

A. There are 12 on this one -- no, there are 13.

Q. Thirteen songs. Are there any under one minute in length?

A. No.

Q. Are there any over five minutes in length?

A. No.

Q. Actually I think there is one if you look carefully.

A. Yes, there is one.

Q. So there are 12 songs which under the NMPA proposal

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1 would get a one-unit rating. And how long is the song that's
2 over five minutes in length?

3 A. It's 5:05.

4 Q. So that would get 1.2. In other words, one unit for
5 the first five minutes and then two-tenths of a unit for the
6 additional section over five minutes. So then we'd get a total
7 of 13.2 units under the calculation proposed in the NMPA
8 proposal; is that correct?

9 A. I believe so, yes.

10 Q. So then to compute -- there again, you said it was a
11 \$7.98 suggested retail list price, six percent of \$7.98 is 48
12 cents.

13 A. Uh-huh.

14 Q. So to compute what royalty each song on the album
15 would get, first take the 12 that get one unit, we take the
16 fraction of one divided by 13.2 times 48 cents which comes to
17 3.6 cents. And then for the one longer song, we take the frac-
18 tion 1.2 divided by 13.2 times 48 cents and that comes to 4.36
19 cents.

20 So that's the computation for the royalties on that
21 album; is that correct?

22 A. I believe that's right.

23 Q. What's the next album we're talking about?

24 A. It's called "Prez Conference." It has ten songs in it
25 none of which are over five minutes.

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Q. "Prez Conference," \$7.98 suggested retail list?

A. Uh-huh.

Q. Ten songs?

A. Uh-huh.

Q. And each one gets one unit, correct?

A. Uh-huh.

Q. So it's one-tenth times 48 cents which is six percent of \$7.98 and that comes to 4.8 cents for each of the ten songs; is that correct?

A. Yes. And I'm now paying 2.75.

Q. I understand that. So on this album it would come out to more than the current statutory royalty. What's the next album?

A. It's "Prez and Joe." It's ten songs and none over five so it's the same calculation.

Q. So that also comes out for "Prez and Joe" 4.8 cents?

A. Right.

Q. What's the next album?

A. The next album is "Honky-Tonk Piano." There are 22 songs in it.

Q. What's the suggested retail list price?

A. \$7.98.

Q. Are there any songs under one minute?

A. I don't know because there are two medlies and I don't know how long the songs are.

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Q. What is the --

A. See, here's a medley that's five minutes and 30 seconds long that has one, two, three songs in it. I don't know how long the songs are. How would I handle that?

Q. Well, I think that there you have an instance where you may have to time the medley and time what the length of each individual segment --

A. I know but if it's one unit do I pay per song for one unit or two units or could I take the whole song as 5:30 and pay a unit-and-a-half or whatever it is?

Q. Well, under the NMPA proposal, because each separate song is a separate copyright, it must be treated separately under the statute. If it is less -- if each segment, each part of a copyrighted composition is less than one minute in length, it would get a one-third unit and if it is more than one minute in length and less than five minutes it would get a full unit.

A. But that would raise the price even above the rate you're suggesting now because in this instance I believe that we're paying pro rata on the song as it is and now you're suggesting that each individual song get a unit, you see..

Q. Well, let's see if it would and here I will acknowledge to you that what you would have to do is time the medley and see how long each part of the medley would be. How long would it take you to time the first medley that appears on that album?

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A. Well, I don't know, five minutes and 30 seconds.

Q. That's the length of the medley?

A. That is true but you want to assign indivudal units to each song in the medley which would bring up the price which is what I'm concerned about.

Q. Well, I'll get to that in a second. My question now is how long it would take to time the medley and you tell me it would take five-and-a-half minutes.

A. Uh-huh.

Q. And there's another medley on there?

A. Yes, there's another medley on there.

Q. And how long is that?

A. See, this one is -- the medley is two minutes and seven seconds and it has one, two, three, four songs on it.

Q. Okay. But it would take you two minutes and seven seconds to time that medley?

A. Yes, but it would enormously increase the price I have to pay for it.

Q. I said we'll get to that in a moment.

A. Well, that's what I'm concerned about.

Q. I'm very concerned about that, too. So it would take you five-and-a-half minutes to time one of the medleys and two minutes to time one of the others. And if we had a record player here and if we wanted to take that seven minutes which we will not do, we could go through and compute that section.

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A. Uh-huh.

Q. But now let's see whether it really would increase the price because I know that's what you are concerned about.

A. Right.

Q. What is the suggested retail list price of that record?

A. It's \$7.98.

Q. That's the "Honky-Tonk" record?

A. Yes.

Q. \$7.98. And you said it was 22 songs, right?

A. Well, no, there are 22 tracks.

Q. Twenty-two tracks?

A. Twenty-two tracks with the medleys, let me see, there would be an additional five songs. So it's 27 songs.

Q. Let's go back to the beginning because I want the computation to be absolutely precise. There are 20 of the tracks are individual songs; is that correct?

A. That's right -- no, no, I see now -- yeah, there are three medleys, I'm sorry.

Q. So 19 --

A. No, pardon me, please forgive me, I haven't looked at this album in a while. There are four medleys.

Q. Four medleys. So 18 of the tracks are individual songs?

A. Right.

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Q. Now, how many songs or parts of songs are there in the first medley?

A. In the first medley there are two songs.

Q. Two. How many are there in the second medley?

A. Two songs.

Q. And how many are there in the third medley?

A. There are four songs. In the fourth medley, there are three songs.

Q. And the fourth medley, there are three songs?

A. Yes.

Q. So, 18 plus 2 plus 2 plus 4 plus 3 is 29 copyrights?

A. Uh-huh.

Q. So on the "Honky-Tonk" album there are 29 copyrights?

A. Uh-huh.

Q. And the suggested retail list price is \$7.98. Now, under the current statutory royalty system in each of the publishers of each of those 29 copyrights insisted on getting the 2 3/4 cent royalty, what would be the total royalty that you would have to pay to record that album?

MR. SHERMAN: You're asking purely a hypothetical question?

THE WITNESS: Yes. You're saying "if" they insisted. They don't.

MR. ZUCKERMAN: Oh. I thought there was no negotiation in this industry.

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THE WITNESS: It's traditional in our industry if you do part of a medley you don't pay the full rate because the whole rate is considered for the whole performance.

BY MR. ZUCKERMAN:

Q. But is that what the compulsory license says?

A. I don't know. I'm not that familiar with it. Is that what the compulsory license says?

Q. Well, in other words, do you have any right under the statute to pay any less if a publisher demands it than the 2 3/4 cents per song whether you use the full song or whether you use a one-minute excerpt from the song or 15-second excerpt or a 20-second excerpt --

A. I'm not familiar with the law on that point.

Q. Well, I think that Mr. Sherman will agree with me that under the compulsory license system if you use a three-second excerpt or an excerpt of any length from a song and use the compulsory license that you must pay the full 2 3/4 cents for that use of that copyright.

A. Uh-huh.

Q. So the question that I'm asking is not a hypothetical question but a question of what would be the royalty due under the current 2 3/4 cent rate. And by my computation, 2 3/4 cents times 29 songs equals 79.75 cents.

Now, do you pay 79 3/4 cents in mechanical royalty fees on that album?

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A. I'm sure we don't.

Q. So in other words, whether because of industry practice or individual negotiation, publishers have granted you license rates of less than the current statutory rate?

A. Yes. When you have medleys and when you have 22 songs on an album, they generally give you a rate, not all publishers, most publishers.

Q. Now, let's see whether under the NMPA proposal your costs would increase on this album. And here I want to compare apples with apples. I want to compare what the current statutes would require with what the NMPA proposal would require because under either proposal you would be able to negotiate or attempt to negotiate with the publishers for lower rates.

You said it was a \$7.98 suggested retail list; is that correct?

A. Uh-huh.

Q. So six percent times \$7.98 equals 48 cents?

A. Uh-huh.

Q. So now we have three records in your collection where the royalty that would be payable under the NMPA proposal would be less than the royalty that would be payable under the full statutory rate in the current law; is that correct?

A. Yes, it's true but it represents less than five percent of my catalogue. So it's the exception that probes the rule.

Q. I'm sorry that you brought exceptional records with

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you today.

A. Well, I brought my first-line merchandise and I brought merchandise to show how we give the public more songs than normal in order to give value.

Q. Well, if you are saying to me that you didn't bring representative records with you then I can say that I'm only using the records that you brought with you.

A. Well, but you have my catalogue as well. There are not very many two-record sets in the catalogue.

Q. These are your first-line products, you said?

A. Well, this is the recent product. These were television offers. That's why they have 22 songs in them.

Q. You described it as your first-line product.

A. Yes.

MR. SHERMAN: He also described it as television offers.

MR. ZUCKERMAN: I heard his testimony.

MR. SHERMAN: Well, good, let's not take it out of context.

BY MR. ZUCKERMAN:

Q. Now, let's get back to the question that I was asking you about. We went off on this other approach because you said you were concerned about your costs and I think that shows what effect this could have on costs. It might help it.

Let's go on to your next album that you have there.

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A. Anita O'day.

Q. Anita O'day.

A. Twelve songs and there are none over five minutes.

Q. I didn't hear you.

A. Twelve songs and none over five minutes and none under one minute.

Q. What's the suggested retail list price of that?

A. \$7.98.

Q. So each song would get a royalty of one-twelfth times 48 cents equals four cents; is that correct?

A. Uh-huh.

Q. What's the next album that you have?

A. Well, this is the other two-record set, "The Very Best of the Moms and Dads" which is 22 songs, none over five and none under one. So you already made that calculation.

Q. So that is also \$7.98 list and one-twenty-second(1/22) times 48 cents equals 2.18 cents; is that correct?

A. Yes.

Q. Now, we have now gone through seven of your albums; is that correct?

A. Uh-huh.

Q. And it has taken us about ten or twelve minutes; is that correct?

A. Uh-huh.

Q. And we have computed what the royalties would be that

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would be payable on each of those albums with the exception of the one where we agreed we would have to time the medleys; is that correct?

A. True.

Q. So there isn't really much of an administrative task at all --

A. Let me tell you what the administration problems are. May I respond?

Q. Certainly.

A. Okay. I have a memo here from my bookkeeper and I would like to read it because it's concise and it expresses the problem perfectly, much more effectively than I could. It said, "From a brief reading of the proposal of a percentage royalty for publishers it would appear to be a nightmare for us to implement. Since we run with a small staff and on a manual accounting system it would mean an additional employee for a period of months to revise our method of paying publisher royalties. For example, since playing times are not recorded on our royalty records because the rates are listed from the licenses it would be necessary to go back to the original lable copy for each of the albums."

Now, here's the critical part of it." Since we have different price lines plus different retail prices for records and tapes, we could wind up with three different rates for any song. It would mean that we would have to compute sales of

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1 records and tapes separately which we do not currently do under
2 the unit method and it would not just involve extra time in
3 setting up the system but it would involve extra time every
4 time our royalties are paid. I do not understand how returns
5 would be handled under the system when it first became
6 effective. If you receive returns which have been paid at 2.75
7 on a song that now costs four cents, would you adjust the units
8 for the amount of return or would you have to adjust the dollar
9 amount?"

10 "Since we have many instances of songs that appear on
11 a number of albums at two different retail prices plus perhaps
12 a different rate for tapes, would returns against one album
13 still be deductible against the same song on another album at
14 a different rate?"

15 Now, we're talking about probably 2000 copyrights.
16 That's my problem as succinctly as I can express it.

17 Q. Well, we're talking about 2000 copyrights and that
18 represents about 200 albums; is that correct?

19 A. Roughly that, yes.

20 Q. And we just computed six of those 200 albums in ten
21 minutes.

22 A. True but I have -- you see, but my \$6.98 records have
23 the same songs on them in some cases as my \$7.98 records which
24 means that the price I pay for the use of the song is different
25 now whereas it's exactly the same. Besides, I have \$6.98 records

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that sell \$7.98 on tape. So the same song would get a different rate on the same album in two different configurations.

Q. I will state to you that the observation you make about tapes and records is correct. But I want to go back to the statement that you made a second before that which is that you paid the same rate for different songs on different albums. And I will draw your attention to the album that is entitled, "The Very Best of the Moms and Dads."

Now, do any of the songs that appear on that album also appear on any of your other albums?

A. Yes. All of these songs appear on other albums. This is a re-packaging so I would have a different rate on this album than I have on the original albums which are only 12 songs. So the same song by the same people would have two different rates which is an accounting nightmare.

Q. If it's a nightmare, it's something that you have now.

A. No, because I merely multiply "The Ranger's Waltz" by 2.75, take the number of records sold and that's what I pay the publishers.

Q. For the other record?

A. For all records. So if I have the same song -- well, all of these songs appear on a regular 12-song album at \$7.98. Now suddenly there are 22 songs at \$7.98 so the same song by the same artist and the same version will have two different

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prices.

Q. Right.

A. Now, how can you deny that?

Q. Oh, I'm not denying that at all.

A. So you see how much more complicated that is for us?

Q. I'm sorry, Mr. Norman, you misunderstand. I'm not denying that you might have two different rates for the same song --

A. By the same version and the same --

Q. What I am asking you, Mr. Norman, is whether that exists now.

A. Whether it exists now?

Q. Whether you have two different rates for the same song now.

A. Do I have different rates for the same song now?

Q. On different albums.

A. In some cases, yes, but not uniformly.

Q. And you wouldn't have it uniformly here either. What you would have under the NMPA proposal --

A. Well, I would have it uniformly if the record were \$6.98 and the tape was \$7.98. Then every song in those albums would be like that.

Q. My question to you, Mr. Norman, and I want to make sure I understand your answer is whether now the same song that appears on the "Very Best of the Moms and Dads" album which

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appears on another one of the "Moms and Dads" album carries a different rate on the "Very Best" album and on the other album?

A. Yes, in that particular case it does but it doesn't answer the question of the different price for tapes and records and also different price for singles. You see, I could end up with four different rates on one song. If it's on a record at \$6.98, a tape for \$7.98, a disco record for \$4.98, and a single for \$1.49, I could have the same song on four different configurations having a different rate.

Q. And under the current system if you have the same song on different albums, you could also have a different --

A. Very unusual. These are only a matter of the TV packages which is the only time I've ever asked for rates from publishers.

Q. Well, why did you select the records that you brought with you?

A. Well, because it's an example of what I'm doing in the record business.

Q. Is it representative of your catalogue?

A. Not really because half of my catalogue is \$6.98 and it's vintage jazz. And nobody gets a rate on that.

Q. So, half of your catalogue that's at \$6.98. Six percent times \$6.98 equals 42 cents so there would, in fact, be a lower royalty under the NMPA --

A. Yes, there is and there's a lower retail price --

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Q. So on the half of your catalogue that's \$6.98, the total royalty payable under the NMPA proposal would be less than the total royalty payable on the sample records that you brought with you; is that correct?

A. Yes. The royalty would be less, my wholesale prices less, the retail prices less. I'd get less money for it. But in a tape it would be \$7.98 which means the royalty would be higher which means I would have two different prices on the same song in two different configurations.

Q. Let's go on to a different subject, Mr. Norman. Yesterday when we were talking about one of your records -- I believe it was the Clifton Schenier album --

A. Right.

Q. -- you referred to the fact, I believe, that your company was the publisher of this album as well as the record company?

A. Yes, precisely. He does all original material.

Q. I believe you also testified yesterday that this album sold for 35 percent less than that other front line product in France; is that correct?

A. I believe it does, yes.

Q. Why is that if it sells for \$7.98 which is the price of front-line product in the United States that it sells for less than that in France?

A. Well, I'm really not in a position to say. I trust

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the judgment of my French affiliate to decide at what price they can best exploit and market albums. You must remember that the French market is only about 17 percent of the U.S. market. I'm sure they have to give price incentives in order to increase their volume.

Q. And I believe that on this chart, RIAA Exhibit "N" with the additions and corrections made by NMPA titled "Comparison of Illustrative Suggested Retail Prices with Royalty Base," it showed --

MR. FITZPATRICK: Just so the record is clear, it's your view that they are corrections.

MR. ZUCKERMAN: I'm sorry, it is. It is my view that they are corrections. It is Mr. Thomas' testimony that these are the royalties actually paid in these countries.

MR. SHERMAN: On first-line product.

MR. ZUCKERMAN: On the information that Mr. Thomas gave to us, whatever that happens to be --

MR. SHERMAN: Which he testified was first-line product. Let's just be clear on the record so that if we are going to state it, let's state it accurately.

MR. ZUCKERMAN: Let's be clear on the record then although I don't want to engage in a discourse with you, Mr. Sherman, that what Mr. Thomas testified to is information that had been provided to Arnold & Porter by Polygram and --

MR. FITZPATRICK: Not Arnold & Porter, Mr. Thomas.

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MR. ZUCKERMAN: Had been provided to Mr. Thomas by Polygram and that a chart had been prepared by Arnold & Porter.

MR. FITZPATRICK: By Mr. Thomas.

MR. ZUCKERMAN: That's not what he testified.

MR. FITZPATRICK: Yes, it was. Now, let's get this straight. Let's get this straight. His testimony was that the information that he prepared -- the information came from Polygram to him. He prepared the information. We took the information from his computations and put it on a chart. He did not do the graphics on the chart but the record is absolutely clear on that.

MR. ZUCKERMAN: Mr. Thomas' testimony will show what it shows.

MR. FITZPATRICK: Just don't say it --

MR. ZUCKERMAN: I don't want to go off on a tangent and think that the Tribunal will rule that Mr. Thomas testified that the royalty rate payable in France on albums that sell for \$12.19 retail is 64 cents.

And Mr. Norman testified yesterday that his albums sell for approximately 65 percent of that price in France and therefore we computed yesterday that the royalty payable on Mr. Norman's albums in France would be 42 cents.

BY MR. ZUCKERMAN:

fee

Q. Mr. Norman, what/does Crescendo Records, the record company that you have, get for each of the albums that are sold

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in France of the Clifton Schenier releases?

A. I'm sorry. What royalty rate, you say?

Q. How does the record company, Crescendo Records, get income from that Clifton Schenier album?

A. We receive -- in our contract with France it's an old contract, it's 10 percent, 10 percent of the retail less packaging, less taxes.

Q. Ten percent of the retail?

A. Yeah, as a producer's royalty, yes.

Q. And that's computed on a percentage basis?

A. Yes, it is.

Q. And do you receive income as the Crescendo publisher apart from that?

A. Yes, we do, after the deduction of the fee charged, the administration charge by the French publisher.

Q. Now, let me compute with you, if I may, and I want you to verify whether these computations are correct. First, how much Crescendo Records gets from each of those albums of Clifton Schenier that are sold in France.

A. Now, mind you, half of the income is credited to the artist so the artist and I share the 10 percent.

Q. The artist and you share --

A. That's right. So essentially I'm getting five percent. The artist royalty is included in the 10 percent. It's not just for Crescendo Records. It's all the artists.

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Q. Now, let's go through that then. The royalty base of the albums listed on Mr. Thomas' chart, "Comparison of Illustrative Suggested Retail Prices with Royalty Base" is \$8.55.

So should I then assume that the royalty base of your product would be approximately 65 percent of that?

A. I presume so, yes.

Q. And 65 percent of \$8.55 is -- now, here I will have to --

MR. SHERMAN: I get \$5.56.

MR. ZUCKERMAN: I get \$5.56 also.

BY MR. ZUCKERMAN:

Q. And you said that the royalty that Crescendo Records gets from the sale of this album by Clifton Schenier in France is 10 percent of that and that Crescendo then divides that --

A. Right. Half of that is credited to the artist.

Q. Half to Schenier and half to Crescendo.

A. That's normal, right.

Q. So you get a total record income of 56 cents and that goes 28 cents to the record company and 28 cents to the artist?

A. Right.

Q. You testified also that Crescendo Publishing -- is that the name of your publishing company?

A. No. In this case it's Skyview Music or Neal Music, I

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don't remember which.

Q. But it's a publishing company that is your --

A. That we own, yes.

Q. So, let's compute what the publisher gets from that same album sold in France. And I think we start there with the 42 cent total mechanical royalty rate, total mechanical royalty paid; is that correct?

A. I don't know.

Q. Well, that's what we computed.

A. You mean that on a 65 percent list price multiplied by the royalty rate that publishers get in France is 42 cents?

Q. That's correct.

A. Okay.

Q. And understand that because of rounding problems we may be off by a cent or two, but that's an accurate figure.

A. Right.

Q. Now, you said the 25 percent goes to a sub-publisher in France; is that correct?

A. Right.

Q. So the French publisher gets 10.5 cents.

A. See, this is all questionable to me because I understand from my limited knowledge of the way that BIEM or SACEM works that there are enormous deductions before you take the list price, the VAT tax, other taxes, packaging that I'm not willing to -- I'm not an authority on the subject.

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Q. I understand that. But Mr. Thomas was here on Thursday --

A. See, that's the effective royalty.

Q. And Mr. Thomas testified that the royalty on the albums that sell for \$12.19 was based on a much lower royalty base and it came to a 64 cent royalty. And then using the 65 percent example, we came to a 42 cent royalty for your product?

A. Right.

Q. Now, the French publisher gets 10 1/2 cents; is that correct?

A. Uh-huh.

Q. And that leaves 31 1/2 cents to come to the United States?

A. Right.

Q. Of that you said that 75 percent goes to the writer?

A. No, I didn't say that.

Q. Well, I thought that was your testimony.

A. No, no, no. Fifty percent goes to the writer.

Q. Fifty percent goes to the writer. Maybe it was that I was recalling that for one of your other artists in France that the writer got 75 percent; is that correct?

A. Yes. Where the artist, Queen Ida, was the co-publisher they get 50 percent as writers and 25 percent as co-publishers so they end up with 75 percent of the revenue.

Q. But Mr. Schenier is not the publisher?

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A. No, he's not a publisher.

Q. So, for Mr. Schenier, 50 percent goes to --

A. The writer.

Q. And 50 percent goes to the publisher?

A. To the publisher, right.

Q. So, if we take 31.5 cents times 50 percent we get 15.75 cents to the writer and 15.75 cents to the publisher. Is that correct?

A. Uh-huh.

Q. And by "the publisher" there I mean the Crescendo affiliate that acts as the publisher on the Clifton Schenier album.

A. Right.

Q. And if you had the Queen Ida album, if we did the same computation for the Queen Ida album, because we have the same 42 cent royalty, the same 25 percent to the French publisher, but then a 75 percent-25 percent split when you get to the United States --

A. Right.

Q. -- that the writer there, Queen Ida, would get 23.625 cents and the Crescendo affiliated publisher would get 8 3/4 cents; is that correct?

A. I believe so, yes.

Q. So that on this record, Clifton Schenier, when it is sold in France the Crescendo publisher gets 15 3/4 cents and the

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Crescendo Record Company gets 28 cents; is that correct?

A. Uh-huh.

Q. And when a Queen Ida record is sold in France, the Crescendo publisher gets 8 3/4 cents.

A. Uh-huh.

Q. And the Crescendo Record Company gets 28 cents; is that correct?

A. That's probably right, yes.

Q. Now, you testified yesterday, Mr. Norman, that you did not respond to the study conducted by the Cambridge Research Insitute?

A. Right.

Q. What were the reasons that you stated that you didn't respond to that study?

A. I didn't respond to it because my company represents probably one-tenth of one percent of the entire record industry and therefore it had no significance.

Q. Are there other small companies that are similar in size and operations to Crescendo's?

A. I would say there are many of them, yes.

Q. Do you know whether these other companies responded to the CRI study?

A. I would have no way of knowing.

Q. Well, if all of the small companies had responded to the CRI study, do you think it might have made some difference

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in what the figures CRI presented were?

A. I don't know the answer to that. I have no way of -- that's a total conjecture. I have no statistical information to base a judgment on.

Q. Mr. Norman, I believe you also testified yesterday that publishers do not do any promotion; is that correct?

A. That's right.

Q. Have you ever heard of a publishing company called April-Blackwood?

A. I've heard of it; they have never called on me.

Q. Mr. Norman, I am going to hand you the 1980 Annual Directory and Awards issue, July 19, 1980, published by Record World. And I direct your attention to Page 79 and I would ask you if you could read into the record the first two paragraphs of the text of the ad that appears on that page.

A. Do I get scale for reading commercials? "Our success starts here. At April-Blackwood we have made a habit of converting great songs into classic hits. Our search for songwriting talent goes on 24 hours a day. Once we've found it, we assist our writers in a variety of ways from promotion to print to day-to-day song plugging. We develop them as prospective recording artists and we work closely with record companies to maximize the exposure to our sharing artists and their songs."

Is that it? "There is an awful lot that has to be done in order to move a tune from a lead sheet to the top ten

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and at April-Blackwood we think we do it better than anybody else."

Q. To your knowledge, is that ad false?

A. Is it what?

Q. False.

A. At fault?

Q. False, f-a-l-s-e.

A. Oh, false. Well, I have no way of ascertaining that. I mean, maybe they are very active with other record companies.

Q. Let me turn now to the statutory criteria and I did not bring with me the chart but I did bring with me the statute. And in particular, to the part in Criteria C which refers to capital investment.

May I ask you, Mr. Norman, does Crescendo Records have a pressing plant?

A. No.

Q. Does Crescendo Records have a recording studio?

A. No.

Q. What does the capital investment of Crescendo Records consist of?

A. Well, an enormous investment in masters, in recording sessions.

Q. And?

A. And because I don't have a studio I pay a premium to use other people's studios. Because I don't have a pressing

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plant I pay a premium for pressings.

Q. And the pressings are an expense of the company, not a capital investment; is that correct?

A. My investment in my company is the investment I've made in recording people.

Q. I understand but I am referring to the statutory criteria which refer to "capital investment." And I was asking you whether the expenses of pressing records were a capital investment?

A. No. They are not. I had a capital investment, however, in my inventory.

Q. Let me turn then to another statutory criteria: technological contribution. We heard testimony last week about the development of digital recordings. Has Crescendo Records taken any role in the development of digital recordings?

A. No.

Q. I want to go back for just a moment, if I may, to some of the computations that we did on albums and rather than referring to any specific album let me ask you: Do any of your albums contain songs that are in the public domain?

A. Very few, very few.

Q. How many of the albums do, would you say?

A. I have never calculated how many PD songs we've recorded but occasionally we do some, very occasionally.

Q. What about on the albums that contain a large number

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of songs, the special promotional albums? Do those tend to contain PD songs?

A. No. But we try, of course, to record some songs that we publisher in order to minimize our costs. However, we do not sacrifice the quality of the album in order to just record our own songs.

Q. And when you say you try to record some songs that you publish to minimize your costs, by that you mean you try to keep your mechanical royalties down?

A. Right.

Q. Thank you very much, Mr. Norman.

MR. ZUCKERMAN: That's all, Madam Chairman.

CHAIRMAN BURG: Thank you, Mr. Zuckerman. As I recall yesterday, you thought that your cross examination might take another ten minutes. You and the Republicans have a penchant for not hitting the target. But --

MR. ZUCKERMAN: Well, that is -- Madam Chairman, I might say that had I gone yesterday afternoon I probably would have taken only ten minutes but that is the danger of giving a lawyer some time to think about questions that he's going to ask.

CHAIRMAN BURG: I see. Well, they are going to have their keynote speech tonight so everything is not lost.

Mr. Brennan just pointed out that in the transcript yesterday when I asked for the reply submissions to the AGAC

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motion that we wanted them in our office by Monday noon. The transcript says just by Monday. I want to reiterate that we do want them by Monday noon.

All right. Mr. Greenman?

CROSS EXAMINATION

BY MR. GREENMAN:

Q. Mr. Norman, I will be very brief. I think you testified yesterday to some price increases -- cost increases that you have had in such areas as pressing costs, paper costs, and so forth.

Who does your pressing for you or do you do it yourself?

A. No, no. We press our records at a company called Allied Records in Los Angeles.

Q. And they quote a price to you for that?

A. Yes.

Q. And if they increase their price, I take it, you pay it?

A. Well, we sometimes look for a better deal but we have a longstanding relationship with them and they are decent people. They do a good job and we stay with them.

Q. And if under competitive circumstances, in other words, they have the bargaining power to get the price increase, you pay it to them?

A. It's not a matter of bargaining power. They justify

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the increase by the OPEC product known as vinyl.

Q. Whatever justification they give, if they raise their price to you and you can't get a cheaper price from another equally satisfactory supplier, you pay it; is that right?

A. I have a choice of either paying it or not pressing records, right.

Q. But except for an increase in the mechanical rate in 1978, the songwriters and the publishers have not been able to demand an increase in their rate, have they?

A. True, but my payments to publishers have increased continually over many years because of expanded markets.

Q. That is because of the volume?

A. Because of the volume, right, because of the new configurations. Tapes are very important and our foreign has expanded, too, which means increase to publishers.

Q. Do I understand that the purpose of this proceeding is to set a rate that will last until 1987?

A. Right.

Q. Do I understand that it's your opinion that those volume increases are going to continue as they have in the past through 1987?

A. I really doubt it frankly because of the indigenous problems that we're facing now with bootlegging and general market conditions.

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Q. So that offset for volume is not going to continue through 1987?

A. I have no way of predicting that; I'm not an economist.

Q. Well, if the volume doesn't increase then there will not be that offset; is that right?

A. If it does they will get more money; if it doesn't, they won't.

Q. That's right. And if the volume increase continues as it has in the past, in other words, 1979 will prove to have been a temporary aberration?

A. I hope so for their sake as well as mine.

Q. I think you said yesterday that a percentage mechanical rate scheme was generally unfair and you gave as an example what you have just referred to here again, that if OPEC increases the oil costs again or as it has in the past and vinyl prices go up, and that, in turn, causes an increase in the price of records --

A. Right.

Q. -- then the writers and publishers would share in that increase through a percentage increase. You said that was unfair.

A. Right.

Q. Now, if OPEC increases its oil prices, will not also the writer have to pay increased costs in his personal expenses

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for oil, gasoline, heating, and all that like everything else?

A. Not at the same rates in my opinion, not at the same rate. I think the best example, the most parallel example, is the one about United Airlines refusing suddenly to give a percentage rate to travel agents because of the escalating costs based on the price of fuel.

The price of fuel went up and their operating costs went up enormously, but the expenses of the travel agents did not. So I think it's a comparable situation.

Q. You said that pressing costs had increased, I recall, 31 percent.

A. Yes.

Q. What do you pay for pressing for an album?

A. It's now at 57 cents.

Q. That's a little over twice what you would pay in mechanicals for a ten-band or ten-song album at the present time?

A. Yeah, I guess so.

Q. If there is a price increase, a cost increase to you in pressing costs, that will force you to increase your prices?

A. I don't know. It would be a value judgment, a delicate decision on balance to decide whether I think I can get more money. Now, for example, in my absence my office got a memo from the largest user in California, Tower Records, a very successful chain, I believe. The gentleman who owns it testified here, is that right? Russ Solomon?

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Q. That's correct.

A. Well, we have a catalogue company. We have 250 albums and Russ Solomon is a great hero to us because he recognized that the public wanted a full-line record store, not just the top 100 albums that you buy at J.C. Penney or Woolworth's or at a department store.

He has a a store where you can buy everything. Every one of my albums are in his stores. So he has helped us enormously.

We got a memo at the office yesterday saying he will no longer buy any old catalogue items because of cash flow. He will only buy new releases. So that's what's happening in our industry.

Q. Well, Mr. Norman, it's no secret that we're in the middle of a recession at the moment and everybody is having financial difficulties.

Now, one of the problems for this Tribunal as I mentioned earlier is that they have to set a rate that will last through 1987. And I think you said and I suppose all of us must say that we don't know what the economy is going to do between now and 1987.

A. Uh-huh.

Q. And yet the Tribunal must set a rate that is fair --

A. Uh-huh.

Q. -- through that term. You said the volume in the

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record industry may increase as it has in the past, presume the expansion that took place in preceding years or it might level off. And your costs and the cost of living and cost increases in the economy generally may continue as they have over the last couple of years or they might level off.

A. Uh-huh.

Q. Although I think if they actually leveled off to no increases at all it would be the millenium.

A. Right.

Q. Now, if the volume of records doesn't increase over the next seven years but if prices keep going up over that time, oil prices go up and other prices go up in the economy more or less as they have within the last ten years, the writers' cost of living is going to go up; is it not?

A. I'm sure it will.

Q. And if we have a fixed pending level of mechanical royalties or a fixed system as we've had over the past years -- not a percentage system, not some adjustment for the cost of living, and if the volume in the record industry doesn't increase, then there is going to be no increase in the mechanicals paid to those writers, is there?

A. You're absolutely right but I think that the whole point of this hearing is a matter of value and contribution. You don't automatically give people more money all the time. But let's examine what they do for it.

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Q. Well, can I --

A. See, in my opinion publishers are not really publishers in the true sense who exploit and promote songs. They are really the copyright owners.

Q. Mr. Norman, there's a redirect here and Mr. Sherman will have an opportunity to ask you other questions but I'd like you to answer my questions at this time.

MR. SHERMAN: Just answer your questions as you wish.

THE WITNESS: I'm sorry?

MR. SHERMAN: Just answer your questions to amplify or respond as you feel necessary.

THE WITNESS: Okay.

BY MR. GREENMAN:

Q. In other words, the only thing that will compensate that will keep up for inflation affecting the songwriters' costs and keep him where at least he is now would be if volume in the record industry doesn't increase, would be some kind of an escalator provision, either a percentage based on the price of the record or some sort of escalator type of consumer price index or something of that kind; is that right?

A. Yes, that's true.

Q. If the volume doesn't increase. On the other hand, if the volume does increase and the record industry as it claims it has done in the past makes its increases entirely by or principally by volume increases and keeps the price of records

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1 relatively flat, a percentage based upon the price of the
2 records will not operate unfairly the record industry, in fact,
3 it will not even increase the mechanical per record; is that
4 right?

5 A. Uh-huh.

6 MR. SHERMAN: Perhaps Mr. Norman understood it but I
7 didn't understand it.

8 MR. GREENMAN: Well, let me see if I can restate it
9 better. You're right. The question was no model.

10 BY MR. GREENMAN:

11 Q. If the record industry increases its revenues in the
12 future as it claims to have done over the past principally by
13 increasing its volume and not by increasing the prices of the
14 records, the cost of the mechanicals per record will not go up
15 on a percentage system; is that right?

16 A. I believe so.

17 Q. So that under either possible alternative either the
18 percentage -- either the volume of records increases but the
19 price stays the same or the volume stays the same and the
20 prices go up, either one leading to greater revenues for the
21 record industry as a whole, a percentage --

22 A. Greater revenues and greater risks and greater
23 expenditures, right.

24 Q. A percentage mechanical royalty system in the one
25 case of increasing volume would not lead to increasing

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mechanical royalty, royalty per record, for the industry?

A. Right.

Q. In the other case of increasing prices with constant volume, however, would provide some protection to the writer against increases in the cost of living?

A. Right.

MR. GREENMAN: I have no further questions.

MR. SHERMAN: Shall we do the redirect now or would you like to break?

CHAIRMAN BURG: Let's do the redirect now.

end tapes 1

and 2 JW

1 Q Mr. Norman, Mr. Greenman was just making
2 about the volume not growing, but costs growing instead.
3 Is there any question in your mind about the necessity
4 to raise prices to recover those costs in some way?

5 A Yes, there is some question in my mind. I
6 would have to consider it very carefully. I would try to
7 reduce all expenditures the best I can, make less records,
8 therefore giving less opportunity to songwriters and publish-
9 ers to participate. I don't know. It is hard to know what
10 I will do at a juncture in the road, whether I can raise
11 my price or not. I don't know that.

12 Q Okay; let us assume for the moment that prices
13 had to be increased. What would happen, in your view, to
14 volume in the industry?

15 A Well, it would merely compound the problem; I
16 would sell less records, The great wonder of the American
17 record business is the fact that by keeping prices low,
18 we have expanded the market continually. It is really a
19 bargain.

20 Q And if volume goes down what would happen to
21 mechanical royalties?

22 A Mechanical royalties would go down.

23 Q Now, under a percentage royalty, publishers and
24 composers would receive higher royalties when the price went
25 up, but they would receive lower royalties in terms of

1 volume, is that correct?

2 A Yes, it would really restrain trade.

3 Q So it would have an impact on the market place
4 and --

5 A Yes, yes. They would get a higher unit rate,
6 but they would get less money.

7 Q Okay, now, Mr. Greenman was suggesting that cost
8 increases in vinyl, for example, to use your own example,
9 are a surrogate for the inflation that is experienced by
10 songwriters and publishers.

11 A That was not my language and I prefer not to
12 have my language misstated.

13 Q Okay; well, I believe that you asked questions
14 about the comparability of OPEC price rises as affecting
15 the price of vinyl compared with the price of gasoline and
16 so on.

17 MR. GREENMAN: The question was re-stating mine.

18 MR. SHERMAN: Well, since your question responds
19 to redirect, it is helpful --

20 MR. JAMES: You want the record read back, Mr.
21 Sherman? You want that question read back on the record?

22 MR. SHERMAN: His question? I would take so
23 much time to find it that it would probably not be necessary.
24 Excuse me.
25

1 BY MR. SHERMAN:

2 Q One moment. Let me show you Exhibit 1 in the
3 statement submitted by Dr. Kiser of the Cambridge Research
4 Institute indicating the price increases experienced by
5 CBS Records during the period 1976-1979. Could you read
6 into the record, please, the percentages for the various
7 items of -- that are components of a recording and
8 merchandising of recording.

9 A The artwork for the cover is up 106 per cent.
10 The radio advertising spot 89 per cent, polystyrene, 68
11 per cent, album jackets, 52 per cent, consumer print ad-
12 vertising, 48 per cent, album sleeves 46 per cent,
13 polymer resin, 43 per cent, freight, 42 per cent, mechani-
14 cal royalties 41 per cent, trade press advertising 29
15 per cent and the CPIS 26 per cent.

16 Q And there are three other items --

17 A Purchased vinyl 24 per cent, base film, 24 per
18 cent, and cassette plastic boxes, 10 per cent.

19 Q Now you were present also during Mr. Mc Cracken's
20 testimony, were you not?

21 A Yes, I was.

22 Q And he introduced a similar exhibit indicating
23 the price increases experienced by Word Records, is that
24 correct?

25 A Uh-huh.

1 Q And the increases may vary, but they showed the
2 same general trend. Would you agree with that?

3 A Yes.

4 Q How does the rate of inflation for the economy as
5 a whole, which I think we can assume would be applicable
6 to songwriters, compare to the inflationary increases
7 experienced by record companies over the same period?

8 MR. ZUCKERMAN: Objection, Madam Chairman. Mr.
9 Norman is being asked to compare figures of CBS Records
10 and figures of Word Records with the general inflation rate.
11 Mr. Sherman wants to ask him about his own concern.

12 BY MR. SHERMAN:

13 Q Mr. Norman is basically just reading the CPI
14 numbers on the chart and comparing it to the other numbers
15 on the chart. It is not out of his personal experience
16 that we are asking him to make that comparison.

17 MR. ZUCKERMAN: That is why the question is
18 improper.

19 MR. SHERMAN: Well, if that were the case,
20 then you wouldn't have been able to ask our witness all
21 sorts of questions about Australia, the UK and everything
22 else. You wanted to read something from the record --

23 CHAIRMAN BURG: Overruled. Proceed.

24 THE WITNESS: Well, the CPI; is that the question?
25

1 BY MR. SHERMAN;

2 Q Yes.

3 A 28 per cent. I would say that if I averaged all
4 the figures and weighted them, that is probably half of
5 the inflation in the record industry, in terms of materials
6 expended and so on.

7 Q Let's turn to a different subject. Mr. Zuckerman
8 asked you questions about the capital investment and
9 technological contributions made by Crescendo Records,
10 and we have testified that Crescendo made no technological
11 developments in the recording area, and that capital in-
12 vestment was essentially master recordings.

13 Mr. Zuckerman skipped over two other criteria
14 that we discussed that were part of the statutory criteria,
15 which unfortunately aren't reflected, because we don't have
16 the chart here, but they are cost and risk. I would just
17 like to return to that.

18 Would you say that Crescendo has greater costs
19 than the publishing companies affiliated with Crescendo?

20 A Absolutely; we produce a product. We have to
21 buy paper, make jackets, we have to buy tapes, we have
22 a manufacturing situation, regardless of whether we have
23 a plant or not, we pay for it.

24 Q So that even though you have invested in the
25 manufacturing facilities, you were paying for somebody else's
investment?

1 A Precisely.

2 Q What about in recording?

3 A Well, if we use someone else's studio, we
4 have to pay them for the use of the studio.

5 Q So even though you haven't invested in your
6 own studio, you are paying for somebody else?

7 A That is right.

8 Q Whether you put that in the capital investment
9 category or the cost category, would you say that the
10 captial investment or costs are higher than those of the
11 publishing companies?

12 A Unquestionably.

13 Q What about with respect to risk?

14 A Well, I do the total risk. The publisher gets
15 paid from the first dollar; I don't see any money until I
16 recoup my costs.

17 Q Let's turn to the April Blackwood ad that Mr.
18 Zuckerman had you read from Record World. Is that ad
19 promoting any recording on which April Blackwood has tunes?

20 A No.

21 Q Is that ad promoting any particular tune with
22 a recording company to try and get a cover record of that
23 tune?

24 A No. I believe it is an attempt to attract writers
25 and recording artists.

1 Q So it is an ad for April Blackwood?

2 A Right.

3 Q Now, if we were to look through Billboard, and
4 I don't have a Billboard with me, when you see ads placed
5 by record companies, are those purely ads placed saying
6 what a great record company we are, or because they talk
7 about the albums that they are trying to sell?

8 A Well, is is almost always for the product. To
9 plug a certain record, promote a record.

10 Q So the best ad that Mr. Zuckerman could find --

11 A Was an ad for the company itself.

12 MR. ZUCKERMAN: Objection, Mr. Sherman; I did
13 not present the ads in that context. If you want me to
14 present ads in that context, I will.

15 MR. SHERMAN: We will be delighted to have all
16 ads that publishers advertise --

17 MR. ZUCKERMAN: I am not going to go out and
18 present all the ads, but there are such ads.

19 BY MR. SHERMAN:

20 Q Okay, let's just go through some of these
21 calculations, as briefly as we can. Let's start with the
22 Sheneer album.

23 As I understand the calculations that we have
24 developed this morning, or that Mr. Zuckerman developed
25 this morning, the royalty being paid to Crescendo

1 Records for the sale of its recording in France, would be
2 28 cents per disc. There are 13 tunes on the Sheneer album.

3 A Uh-huh.

4 Q Those are paid at the statutory rate in the
5 United States. What would the mechanical royalty rate be?

6 A I don't know -- about 13 cents.

7 Q I think I calculated 33 cents.

8 A Okay.

9 Q So we have mechanicals, 36 cents in the U. S.
10 and I believe that we have already established that the
11 mechanicals in France would be 42 cents. Who paid for the
12 recording of the Sheneer album?

13 A Crescendo Records paid for it.

14 Q Who paid for the manufacturing of the Sheneer
15 album?

16 A Crescendo Records paid for it.

17 Q Who paid for the album jackets, artwork, cover-
18 work, and the sleeve?

19 A We supplied all the money.

20 Q Who paid for the freight, transportation and
21 all the other components necessary to distribute that
22 recording?

23 A Well, we paid for it along with our distributors.

24 Q How much did the songwriter pay of that?

25 A Nothing.

1 Q Yet the songwriter is actually receiving quite
2 a bit more than Crescendo Records?

3 MR. ZUCKERMAN: Mr. Sherman, objection. You are
4 comparing the total mechanical royalties in both the United
5 States and France with Crescendo's income per record in
6 France.

7 MR. SHERMAN: No, no. I simply comparing 36
8 cents with 28 cents and 42 cents with 28 cents.

9 MR. ZUCKERMAN: That is not my objection. You
10 are comparing the 36 cents statutory ceiling, and that is
11 not what he testified the mechanicals in fact were, you
12 compare the 36 cents statutory ceiling in the United States
13 with the 28 cents earned by the -- earned by Crescendo,
14 that is the U. S. record company on records sold in France.

15 There is also income earned by the French record
16 company on records sold in France. You want to compare
17 the total mechanicals in both countries with the total
18 income by the record companies in both countries, that is
19 a fair comparison. You want to compare the mechanicals
20 in France with the total income by the record companies,
21 both the French record company and the United States record
22 company in France, that is a fair comparison. You want to
23 make the comparison in the United States between the
24 mechanicals in the industry --

25 MR. JAMES: I think you made your point

lj 3-10

1 Mr. Zuckerman.

2 MR. SHERMAN: We don't know if the French record
3 companies are earning, so I am simply crossing out the 42
4 cents in France and relieve it with a 36 cents earned for
5 mechanicals in the U. S. compared to the 28 cents that
6 would be earned by Crescendo from sales abroad.

7 Let's go back --

8 MR. ZUCKERMAN: My objection still stands.

9 MR. SHERMAN: Well, if we are going to compare
10 everything, we would have to add in all the other sources
11 of income that relate to the record also. Since we don't
12 have that information, we are unable to do that.

13 MR. ZUCKERMAN: Well, my objection was that you
14 are comparing the mechanical income in one country with
15 the record company income in the other country and you
16 are not even comparing what the record company income in the
17 other country, because you are only taking the Crescendo
18 income. There is also a French record company which is making
19 the profit and there is also a French record company which
20 is paying for the costs of those records. Not Crescendo.

21 MR. SHERMAN: We have already had testimony that
22 Crescendo has paid all the costs and that the songwriters
23 paid none of the costs. Wait a minute. Let me finish.

24 MR. ZUCKERMAN: Let me --

25 MR. SHERMAN: I am sorry to interrupt. Okay.

1 CHAIRMAN BURG: Let him finish, and then you
2 will have your chance.

3 MR. SHERMAN: When I stated the costs, I did
4 not mean in France, I mean to produce the master in the
5 United States, but that the songwriter had none of those
6 costs; therefore, what we are comparing is the sale
7 in France, the total effort Crescendo was getting, from
8 its license abroad with the mechanicals that are being
9 earned by the songwriter who invested nothing in that
10 recording -- in that master that is being sold over there
11 from sales abroad. So in fact, I really shouldn't cross
12 off the U. S. line and leave the 42 cents line for France
13 because we are talking about mechanicals in France versus
14 28 cents from the 4 per cent.

15 MR. ZUCKERMAN: But it wasn't 42 cents. It was
16 as Mr. Norman testified the figure shown on the opposite
17 page.

18 MR. SHERMAN: Well, that was -- your point would
19 be on that. Let's see. 6 per cent times \$6.98 is 42 cents.

20 BY MR. SHERMAN:

21 Q What is the current mechanical rate that you are
22 paying on that \$6.98 album?

23 A 27 cents. 27.5 cents.

24 Q 27.5 cents. So that represents, I think I have
25 calculated --

1 A A 50 per cent increase.

2 Q A 53 per cent increase, actually, at the lower
3 priced product, over the prevailing rate.

4 A I don't know.

5 Q 2-1/2 years ago you were paying how much for a
6 10-record set?

7 A 20 cents.

8 Q 20. That was just in 1977. And I have calculated
9 the increase at 90 per cent over the rate that prevailed
10 just two years ago. So much for the great value that NMPA
11 has given you. Mom and Dads album.

12 Now, the Mom and Dads album, would you repeat
13 for the Tribunal what your testimony was concerning the
14 Mom and Dads album? Was this something that you newly
15 recorded?

16 A No; the reason I could use 22 songs is because
17 there were existing masters that had already been paid for
18 and exploited in other albums and it was a re-packaging
19 with no further recording costs. Therefore, I could afford
20 to spend 50 cents an album in order to buy songs.

21 Q And is it customary for you to put 22 songs on
22 an album?

23 A No, it is not; we did it for a television package.
24 That is the only way we could stimulate sales of the record
25 marketing.

1 Q So you would say that that is the exception in
2 your catalogue?

3 A Absolutely; there are only three that we have
4 done in many years.

5 Q So on the Mom and Dads album, which is the
6 exceptional album --

7 A Right.

8 Q You would actually have a net reduction in
9 royalty that would be payable under the proposal. Correct?

10 A Right.

11 Q Now, we have Anita O'Day, and that is a 12-song
12 album, which is -- would you agree that 12 songs is higher
13 than the usual number of tunes on an album. Most --

14 A Tradewise, yes, now. Because the mechanicals
15 went up, people do only 10 songs, but I generally do 12,
16 because we try to have a more complete value for our customers
17 especially for the Mom and Dads people. They are used to
18 12 songs and they want to get 12 songs.

19 Q Okay, now, you would be obligated to pay a
20 royalty of 4 cents per tune on that album?

21 A Right.

22 Q Right now, you are obligated to pay what royalty?

23 A 2.75.

24 Q I have done the calculation; and Mr. Zuckerman
25 can check it. I find that it is 69 per cent increase in the

1 mechanical rate. Another good value from NMPA.

2 MR. ZUCKERMAN: That is not right.

3 MR. SHERMAN: That is not right?

4 MR. ZUCKERMAN: It is a 45 per cent increase.

5 MR. SHERMAN: Well, you will have to do all
6 of the, then, because I got it wrong, and I cheerfully
7 concede for the record that Mr. Zuckerman's math is probably
8 better than mine.

9 BY MR. SHERMAN:

10 Q Now, we want to come back to this, because --

11 A Uh-huh.

12 Q -- unusual circumstances surround this album.

13 Let's see. Prez and Joe, you pay 4.8 cents a record.

14 Mr. Zuckerman, could you tell me what the increase would
15 be over the 2.75 --

16 MR. ZUCKERMAN: 74-1/2 per cent.

17 MR. SHERMAN: 74-1/2 per cent.

18 CHAIRMAN BURG: Out of curiosity, what was your
19 computation?

20 MR. SHERMAN: I had 57. I clearly -- Okay, here
21 is another one, at 4.8 cents, so that would be the same,
22 74-1/2 per cent increase. And if I can prevail upon you
23 once more, Mr. Zuckerman, the late -- the Sheneer album,
24 3.6 cents over the 2.75 per cent rate, what would that --
25 what per cent increase would that make?

1 MR. ZUCKERMAN: The 3.6 cent would represent
2 the 31 per cent increase; that is assuming, of course, that
3 that is the full 6 per cent mechanical royalties.

4 MR. SHERMAN: Yes, you might as well say
5 whatever you want. 4.36 then.

6 MR. ZUCKERMAN: Well, that is more complicated
7 calculation. It is not 2.75 cents, because it is a longer
8 song. It would be 3 cents. Under the current half-cent permit-
9 ted playing time. That is a 45 per cent increase.

10 MR. SHERMAN: 45 per cent, yes.

11 Oh, there is one more. And this is one where you
12 actually got some benefit out of the NMPA proposal from
13 2.75 cents down to 2.67 cents for .18 --

14 THE WITNESS: .08

15 BY MR. SHERMAN:

16 Q Eight tenths of a cent reduction on one pre cent.

17 A Uh-huh.

18 Q Okay, now, we looked at the albums that you
19 brought; would you say that you would stand to gain or lose
20 by the NMPA proposal for --

21 A Well, as you pointed out, the increase would be
22 90 per cent since 19 -- the beginning of 1978.

23 Q Now, the -- I don't have the statutory criteria
24 chart with me. But one of the bottom lines, and I am sure
25 everybody will recall it, directs this tribunal to establish

1 a rate that would minimize disruptive impact on general
2 prevailing industry practice. Now, let's talk about the
3 general prevailing industry practice for just a moment.

4 Has it been a generally prevailing industry
5 practice to pay a flat rate per tune?

6 A I am sorry.

7 Q In other words, are you paying a cents rate for
8 each unit?

9 A Yes, that is the current procedure, and we have
10 been doing that for 26 years.

11 Q And Crescendo has been doing that for 26 years.

12 A Yes.

13 Q The industry has been doing it for how long?

14 A For 70 years.

15 Q Now, the -- is that cents rate the same in most
16 circles?

17 A Yes.

18 Q Now, let's take a look at the cents rate here
19 on the Greatest Science Fiction album. The cents rate
20 would be what? Under the NMPA proposal?

21 A 2.67.

22 Q What would it be on the Clifton Sheneer album?

23 A The -- which is it, the 3.6 or --

24 Q Oh, that for one tune.

25 MR. ZUCKERMAN: No, it would be 3.6 cents for
12 tunes.

1 BY MR. SHERMAN:

2 Q Oh, I am sorry, 3.6 --

3 A 3.6 for 12 and 4.36 for one.

4 Q On this album this would be --

5 A 4.8 cents for each song. That would be 4.8
6 cents a song.

7 Q We will have to come back to this again because
8 it --

9 A Okay, 4 cents a song. That unusual amount --
10 there are 20 Mom and Dads albums; there are only 22 songs
11 on them.

12 Q And what would the rate be on that?

13 A 2.18 on those; on all the others, the 12-song
14 albums, would be 4 cents apiece.

15 Q So on virtually all these albums, the tune
16 rate will be different?

17 A Uh-huh.

18 Q Which is quite inconsistent with general
19 prevailing industry practice?

20 A Yes.

21 Q Let's talk about one more generally prevailing
22 industry practice.

23 CHAIRMAN BURG: Mr. Sherman, how long will this
24 line of --

25 MR. SHERMAN: I think I can conclude in 5 minutes.

1 BY MR. SHERMAN:

2 Q Oh, I am sorry, 3.6 --

3 A 3.6 for 12 and 4.36 for one.

4 Q On this album this would be --

5 A 4.8 cents for each song. That would be 4.8
6 cents a song.

7 Q We will have to come back to this again because
8 it --

9 A Okay, 4 cents a song. That unusual amount --
10 there are 20 Mom and Dads albums; there are only 22 songs
11 on them.

12 Q And what would the rate be on that?

13 A 2.18 on those; on all the others, the 12-song
14 albums, would be 4 cents apiece.

15 Q So on virtually all these albums, the tune
16 rate will be different?

17 A Uh-huh.

18 Q Which is quite inconsistent with general
19 prevailing industry practice?

20 A Yes.

21 Q Let's talk about one more generally prevailing
22 industry practice.

23 CHAIRMAN BURG: Mr. Sherman, how long will this
24 line of --

25 MR. SHERMAN: I think I can conclude in 5 minutes.

lj 4-19

1 MR. SHERMAN: To assist the Tribunal in under-
2 standing the discussion that was had between Mr. Zuckerman
3 and Mr. Norman, concerning Medleys on the Honky-Tonk
4 album, I have made copies of the back of the album so
5 that you can look at it. This will be RIAA Exhibit T.

6 BY MR. SHERMAN:

7 Q Mr. Norman, you testified that there were four
8 medlies on this album.

9 A Right.

10 Q I believe they are indicated on Side 2 of the
11 first disc.

12 A No, there is one medley on side one. And three
13 on Side 2.

14 Q I stand corrected.

15 A Right.

16 Q We are turning to generally prevailing industry
17 practices. Could you please tell me what the general
18 prevailing industry practice is with respect to medley
19 rates?

20 A Well, from my experience, over the years, a
21 medley usually is a half rate.

22 Q You mean one-half rate for each of the songs in the
23 medley?

24 A Yes, susally half of the rate.

25 Q And under the NMPA proposal, as expanded upon
by Mr. Zuckerman, although I have myself seen nothing in the

1 NMPA proposal that bears on medlies specifically, each
2 copyrighted tune would be treated separately as though it
3 weren't part of the medley.

4 A Uh-huh.

5 Q Now --

6 MR. ZUCKERMAN: Mr. Sherman, since you are
7 characterizing my statement, let me clarify it so the record
8 is entirely clear.

9 MR. SHERMAN: Sure.

10 MR. ZUCKERMAN: Under the NMPA proposal, each
11 copyright must be treated separately. That is not the NMPA
12 proposal, that is the statute.

13 The NMPA proposal provides that if a song
14 copyrighted work of less than one minute playing time
15 gets a one-third unit, it is between one minute and five
16 minutes, it gets the same provision under the additional
17 2/10 of a unit per minute of playing time or if it is
18 over 5 minutes. The NMPA proposal does not contain anything
19 that speaks specifically to medlies in that language.

20 However, the obvious theft, and I can also say
21 the intent of the provision that relates to works shorter
22 than one minute, is to provide some basis for adjusting
23 the medley. A specific example of a medley consisted of
24 three parts of songs, each under one minute of playing time.
25 Each of those separate copyrighted works get one-third unit

1 of share and the total share of that one would then be
2 one unit.

3 MR. SHERMAN: Excuse me, did I understand you
4 to say that if there is a medley with three songs, each
5 song -- each of them less than one minute, is that what you
6 said? Each of them was less than one minute?

7 MR. ZUCKERMAN: That is correct.

8 MR. SHERMAN: And if you had a medley with five
9 songs, two of which were less than one minute, and three
10 of which were more than one minute but less than five
11 minutes, and the total copyrights would be $3\frac{2}{3}$ units?

12 MR. ZUCKERMAN: Repeat the example again.

13 MR. SHERMAN: Let's say there are two songs
14 -- there are five songs in the medley. Two songs less than
15 a minute. Three songs more than a minute but less than
16 5 minutes; what would be the total number of units
17 attributable to that medley?

18 MR. ZUCKERMAN: Okay, it would be $3\frac{2}{3}$ units.
19 Let me also say on the record, that there is to our knowledge
20 no legal way of defining what a medley is. A medley is
21 a collection of tunes that are played one after another
22 in succession without a space on the record and without
23 silence on the record between the tracks. In terms of the
24 compulsory license, the important legal distinction is
25 how many different copyrights you are dealing with.

1 And the NMPA proposal's provision for less than
2 -- dealing with less than one minute copyrights is to provide
3 some equity among -- between the copyright owners.

4 MR. SHERMAN: Okay, thank you for the clarification
5 of the NMPA proposal.

6 BY MR. SHERMAN:

7 Q Now, Mr. Zuckerman just told us that as he
8 understands it, a medley is a succession of tunes, one to
9 another within a given track, is that your understanding
10 as well?

11 A That is right.

12 Q Is there -- let me ask you this. If we did the
13 timing that Mr. Zuckerman suggested earlier, that would only
14 take 2-1/2 minutes or five minutes or 5-1/2 minutes, de-
15 pending on how long the medley is, if 5 people times that
16 medley, listening for when one song begins and one song
17 ends, will you get 5 results that are identical with respect
18 to the time of each song on that medley?

19 A I don't know. What is the question again?
20 Would I get the same time for each -- be able to ascertain
21 the time?

22 Q Yes. Is it a clearly ascertainable -- is the
23 timing of a song that is in a medley clearly ascertainable
24 to anybody?

25 A Not always, because sometimes one song is used

1 as a counter melody for a second song which is not uncommon
2 in the music business. So you have one song continuing
3 and the other song starting, being played simultaneously.
4 The great example of that in the music industry was the
5 song "Pick, Pick and Moon Glow," where they played the
6 two songs in contrast to each other simultaneously.

7 There is another point that I think is very
8 critical here. On these old songs, very often a split
9 publisher, the lyric writer or some of the lyric writers
10 or one of the three lyric writers has assigned his copy-
11 right to another publisher.

12 So I may have three different publishers on
13 one song that I have to split the royalty in mind, and if
14 I have 5 songs I am liable to have 20 publishers to pay
15 on one medley. That is within the realm of possibility.

16 Q Let's turn back to the timing however, Are there
17 bridges or modulations between the tunes in a medley?

18 A Sometimes. And also in an album where you have
19 a live performance, and someone is playing the piano
20 and you have what we call a vamp before a song, you count
21 that as part of a song. It is very confusing.

22 Q Well, that is what I was driving at. It is a
23 little bit difficult, at least to me, to figure out
24 exactly how everybody would agree on when a tune begins
25 and when a tune ends.

1 A Right.

2 Q Especially if there are modulations between them.
3 What -- we are talking about medlies. But how about albums
4 -- are you familiar with albums where entire side of a
5 record might consist of continuous music?

6 A Yes, we have made albums like that. Uh-huh.

7 Q So this would be sort of an expanded medley
8 where you have one song running into another song with
9 bridges and modulations between them?

10 A Yes; I remember one album we made with a dance
11 orchestra which was intended for people for nonstop dancing
12 in which there were probably 28 songs on the side which
13 was played in seg wave.

14 Q So in that same kind of situation, you could
15 foresee difficulties in terms of determining when one song
16 begins and another song ends.

17 A Perhaps.

18 Q Now, let's look at the -- on Side 2 of medley
19 number 5. I see that is 5-1/2 minutes and I see 4 songs;
20 so I get the feeling that you might have songs that are
21 just over or just under one minute. I really can't tell.
22 Or medley number 2 there -- the Daisy and The Drinking Song,
23 2-1/2 minutes. It could be just under a minute or just
24 over a minute?

25 A Right.

1 Q So now --

2 MR. COULTER: How does ASCAP handle the copy-
3 right for any of the songs in Medley Number 5?

4 MR. SHERMAN: Perhaps somebody from the
5 publishers side can answer it. I honestly don't know.
6 I assume that they handle that -- I assume that they
7 handle the tune as a group.

8 MR. COULTER: It is all public domain on the
9 surface.

10 MR. SHERMAN: What, these songs?

11 MR. COULTER: Yes, Medley Number 5.

12 MR. SHERMAN: Well, that may well be.

13 BY MR. SHERMAN:

14 Q Would you know what the --

15 A What is that?

16 Q Medley Number 5. Is Medley Number 5 public
17 domain?

18 A No, some of it is. Yankee Doodle Dandy is.
19 Yankee Doodle Dandy and Grand Old Flag are George M. Cohan,
20 which is not in the public domain. So half of it is and
21 half of it isn't.

22 Q Well, that would be interesting.

23 A Half of it is and half of it isn't.

24 Q Now, if -- let's assume that there is no
25 dispute about the timing. When you have a song that is less

1 than a minute and some songs that are more than a minute,
2 whatever the timing will be will bear upon not only
3 the royalties payable on that particular -- the royalties
4 paid to a specific publisher, not only in that particular
5 medley, but on the entire rest of the album, under the
6 NMPA proposal. Is that true?

7 A Yes, that is proportionate.

8 Q Therefore, if there were any disputes on any
9 one of these four medlies that appear here on the timing
10 it would affect not just what the particular publisher
11 who is claiming that his tune was let's say more than a
12 minute, but as -- but what every other publisher and
13 songwriter on that album receives.

14 A Yes, absolutely.

15 Q Let me ask you one last question. Mr. Greenman
16 referred to increases in the cost of vinyl that arise from
17 OPEC price increases and so on, and so forth. And you
18 have testified generally about the cost increases you
19 experienced. We have gone through, based on Mr. Zuckerman's
20 analysis, the various price, various cost increases you
21 would incur under the NMPA proposal, if you had to pay
22 mechanicals. Sometimes 25 cents an album, or in varying
23 ranges thereabouts.

24 Have you ever experienced a price increase of
25 that magnitude, that one shot over that increase in any

1 cost incurred on that --

2 A No, most cost increases come 2-1/2 per cent
3 or 5 per cent of cost.

4 Q Thank you very much, Mr. Norman.

5 A Right.

6 CHAIRMAN BURG: I think what we will do is to
7 recess until 1:30 and take the next witness at that time.

8 (Whereupon, the hearing adjourned, to reconvene
9 at 1:30 p.m. o'clock, this same day.)
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JW 5-1

A F T E R N O O N S E S S I O N

1:30PM

Whereupon,

JUGGY GAYLES

was called as a witness, and after being first duly sworn, was examined and testified as follows:

MS. DEAL: Today we have Mr. Juggy Gayles as a witness and I can assure the Tribunal that it is not going to be the same strategy used at the Republican National Convention which I tuned out briefly last night.

DIRECT EXAMINATION

BY MS. DEAL:

Q. Mr. Gayles, would you state your name and address for the Tribunal?

A. My name is Juggy Gayles. I live in Fresh Meadows, New York.

Q. What is your occupation?

A. I am an independent promotion person.

Q. What's a "promotion person"?

A. Well, a promotion person is the type of -- well, it's my objective to get the records around to every possible place that I can get it to to more or less generate enthusiasm and get them played.

Q. Is record promotion a new occupation?

A. No. It is not a new occupation. They have had record promotion in various different forms. They have had them as

5-2

1 long as -- ever since they've had music publishers. Years
2 back, even before I was around they were called song pluggers.
3 And at that time, the song plugger would go around either to
4 nightclubs or dancing -- any place where he would get out there
5 with his megaphone, even to the six-day bike races, and there
6 would be a break and he'd get up there with his megaphone and
7 have some piano players playing a song of his and he'd be sing-
8 ing it through a megaphone.

9
10 And as we went along, it changed. More or less we
11 changed into -- when I came in, in the '30's, it was still song
12 pluggers but then we took a fancy name for ourselves. We were
13 called "contact men." They tried to call us contact men. It was
14 a part of the business where we were out more or less romanti-
15 cizing and trying to become friendly with the singers and band
16 leaders.

17 Q. Why do people hire promotion persons?

18 A. Well, an important thing for the record company is to
19 try to save time and the best way to do it is with promotion
20 people, get them out there and get the record around and see;
21 how fast we can get them started.

22 Q. How long have you been a promotion person?

23 A. I went to work for Remick Music actually in 1938.

24 Q. I read that Broadway columnist Earl Wilson calls you
25 "Mr. Music." Why does he call you that?

A. Well, I've been around so long I would think that my --

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I've become a synonym for music and music promotion.

Q. How did you get into the music business in the first place?

A. Well, in the early '30's, 1933-34 or so, we had a crew of guys out there. We were pretty good Lindy hoppers in those days and we used to go around to the ballrooms and get into a contest and try to win five dollars -- it might have been five dollars or as high as 15. Maybe once in a while we'd find a \$25 first prize.

Q. And?

A. And I started hanging around in the -- that was my first taste, actually, around the bands and if you want to call it show business, and 46 years later I still love it.

Q. So you were one of those jitter-buggers during --

A. Yeah, we were the jitter-bug kids of our day.

Q. Let's start with what you're doing today. You're an independent record promoter. Whom do you promote records for at present?

A. I promote records for various record companies today where -- well, I can name a few, some of the people I work for, that's about all.

Q. You want to name a few of these?

A. Yeah. I work, I do some work for A&M Records, the associated labels at CBS, MCA, RFC which is a subsidiary -- being distributed by Warner Brothers. That's some of them, anyway.

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Q. Do you promote throughout the United States?

A. Well, through the years I've had plenty of contact. I do promote throughout the United States because I've got friends in various cities. But basically I'm based in New York City.

Q. You stated that you promoted a record by kicking it around and generating enthusiasm for it. Why don't you use an example of a current record you're working on to show the Tribunal how you promote?

A. Well, a couple, a few months ago anyway, two or three months ago easy, I heard a record by a group called "The SOS Band" and they had a record "Take Your Time." I heard that record and as far as I'm concerned I thought it was going to be a hit record and I think I was right in time. And I started to take that record around to various places.

Q. Is "SOS" a new group?

A. Yes, it is. It's a new group. They're on the Taboo label which is distributed through CBS.

Q. Who owns Taboo?

A. Clarence Avans.

Q. Has "Take Your Time" been successful?

A. Yes, it is now. It's way up on the charts today.

Q. Where have you plugged "Take Your Time"?

A. Well, it had that New York feel. And I thought the best place to start it would be to take it around to some

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1 discotheques and roller rinks and that's exactly what I did.
2 That's how I started promoting that record.
3

4 Q Did you take "Take Your Time" to radio stations, for
5 example?

6 A Yes, I did. Once the promotion started, the word got
7 around that it was a pretty good record, I started to take it
8 to radio stations. The first radio stations that it was played
9 in New York City were WBLS and WKTU because it was that type of
10 record. Since then, it took no time for every other station in
11 New York City to jump on it, WNBC, WABC, WXLO, WBLI, and
12 practically every station in New York City.

13 Q You said that you took "Take Your Time" to various
14 disco's. What disco's are you talking about?

15 A Well, there were certain disco's in New York City.
16 Some of them were like -- Studio 54 is strictly a show disco.
17 I knew there was no sense taking it to "54," it wouldn't have
18 generated any enthusiasm which I knew would get back to the
19 radio station if I took it to "54." But there are other disco's
20 in New York where you find people that are in there and instead
21 of looking for show or to see which big names are around, there
22 are certain disco's where the people actually go to only to
23 dance. And they don't care. They can come in with their jeans
24 and sneakers and what-not but they're out there romping and
25 stomping.

Q What do you mean when you say that the Studio 54 type

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disco's are just for show?

A. "54" usually -- the people that come to "54" aren't really record buyers until they know -- by the time it finally hits them they are hits. They have been played on the other stations anyway and the other disco's.

Q. You stated that you had also taken "Take Your Time" to various roller rinks. Why do you take a record to a roller rink?

A. Because today we've got a rhythm out there. There's a new thing out, as far as I'm concerned, it's nothing but a dance rhythm. For want of a name, I think they call it "disco," but it's a dance rhythm and it's also a skating rhythm. I know one thing. When I hear a record and if it's got a skating rhythm I know the direction I can take that record to.

Q. Did you take "Take Your Time" to something called a -- would there be a show roller rink, for example?

A. Yes, there's a show roller rink, the Roxie, if anything I think would be show, but there are still disco's out in New York City where you find skaters are up there and they love to get out and just skate and keep skating to these things. A place like --

Q. You mean romp and stomp to roller skates as well?

A. Well, you can skate and -- I don't know. I'd have to get a rhyme for that one. But at a place like Metropolis I know we can start records there because, in fact, I just -- I have

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seen people skate right off the boards and come right over to the D.J. and holler, "What's the name of that record?" I've seen it.

Q. Did you also promote "Take Your Time" at various record stores in the New York City area?

A. Well, that's another thing. See, you've got to get her on to the record stores because -- I know a lot of people at the King Karol, Korvette's, Goodie's, Colony Record Shop. And these are places where I know I can start generating some enthusiasm.

Q. What about record pools? Would you please first define what a record pool is for the Tribunal?

A. In the last few years we all looked for places to start these things and we've come across with these deejays at the discotheques and the roller rinks.

Now, they, in turn, belong to one -- they join a record pool. Now, in New York City there are a couple of good ones where you know once you've got those records, if you get it over to these pools where each of the deejays more or less have a number. And they've got a corresponding file there.

Now, the record companies send their records to these record pools and they put them into these bins and once or twice a week the deejays come around and pick up the records that -- well, they'll pick them up at the record pool. They will either listen to them at the pool or take them home and

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take a listen. If they like them, they'll play it. That's always been a policy of mine. I give them a record. "If you like it, play it. If you don't like it, give it to a friend of yours. He may like it."

Q. Do you consider record pools to be an important promotional tool?

A. Today they are a tremendous tool in New York City.

Q. What about one-stops? Did you take "Take Your Time" there? First, could you define again what a "one-stop" is for the Tribunal?

A. A one-stop is a place where, let's say, the various record companies and record manufacturers, where they've got their salesmen. Instead of the salesmen making all the Mom and Pop stores throughout the city, they usually bring it into one wholesale buyer who -- he most likely carries everybody's records there. And the Momma and Poppa stores come into those one-stops and they get their records from them.

Q. Why is it important to promote at one-stops or why are one-stops important?

A. Well, they have their own little -- they have their own people sitting at telephones selling the records and it's my business to know those people who are at the phones and to get them at the point where when they're getting on the phone and they're calling a little Momma and Poppa store in The Bronx and they'll say, "Look, we got a new record in -- if we're

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speaking about the SOS Bank, "I got a new record by SOS Band. It's a brand new outfit. You don't know anything about it. Take my word. The record looks good." And they'll sell these records to the Momma and Poppa stores.

Q. What about trade papers? First, could you list what are the influential trade papers for promotion perhaps in the United States?

A. Well, I might as well list them alphabetically which would be Billboard, Cashbox, Radio and Records, and Record World. I think those are about the four most influential ones.

Q. Are the trade papers an important place to promote?

A. They sure are.

Q. Why?

A. Well, we have people looking at those trade papers and the idea is to try to get them up their charts.

Q. By going everywhere -- you described all these various places -- does this mean that you have personally taken your record "Take Your Time" around to every one of these places?

A. I have taken them around to the key places. I can't take them around to every one of them but that personal contact is a tremendous asset to me.

Q. Why?

A. They know me and I have through the years I think I've built some credibility out there that they know that if I'm

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1 coming around I'm coming around with a winner. And if I'm really
2 pushing something and really laying on it, nine out of ten
3 times it's a winner.
4

5 Q. You stated by "everywhere," you mean that you have
6 taken your record around to one-stops and radio stations and
7 the trade papers and record pools and discos and roller rinks.
8 Why is it necessary to plug songs everywhere? Why can't you
9 just, for example, plug songs at simply one location?

10 A. Well, the idea is, it's all a snow-balling effect, I
11 would think, where the more play you're going to get the more
12 sales you're going to get, and the more sales you get you're
13 still going to get plays on top of that and as the sales con-
14 tinue and the play continues, you're moving your record up the
15 chart and that's what you're looking for, to get it up to the
16 top.

17 Q. You said that the SOS Band is a new group?

18 A. Yes. That happened to be the first record they made.

19 Q. Are you the only person CBS has hired to promote
20 this new group's album?

21 A. No. I would imagine that they also have hired some
22 other independents. And then they've got their own staff. They've
23 got their own people working the record.

24 Q. If CBS already has a large promotional staff, why is
25 it necessary to hire someone like you, an independent promoter?

A. Well, I imagine it would be the same thing as somebody

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that was sick and went to a doctor and if they wanted a second opinion, they most likely would go to a professional and get a second opinion and they'd find out that they're ugly but it's still a second opinion.

Q. Do record companies also hire independent promotion persons for reasons other than simply getting a second opinion?

A. No. A lot of independent people, though, might be hired in various parts of the country where they may have -- they may have the same access that I might have around New York City. But it's just that -- it's that extra push that they're looking for because time is an important thing with a record company.

If they get a starter, they try to find out in a hurry if they've got a winner. They keep pushing and if it's a loser then there's only one word. "Next."

Q. You stated that you were hired sometimes as an independent promoter to give a second opinion on a record rather like a doctor gives to an ailing patient.

Why do people adopt your opinion about a record rather than someone else's?

A. Well, it's actually -- it's a judgment call in this case. It's just a judgment opinion. But like I said earlier, I think I've been around long enough to establish that credibility where they may listen to me a lot quicker than they'll listen to somebody else.

Q. When you're listening, for example, to a record and

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you decide, "This is a winner," or "This is a loser," how do you tell?

A. Well, I've been known to have these -- they used to call me "The guy with the long Jewish nose who can smell out the winners."

And again, it's my judgment. It's my neck out there. If I'm going to pick losers I'm/^{not}going to be working for too many companies.

Q. I mean, you don't have some kind of special Juggy Gayles scientific test for judging a record success, if any?

A. No, no, no. It's strictly my judgment.

Q. Can you give the Tribunal some examples of recent winners you have smelled that you have promoted?

A. Well, it's not only that I smell. It's these record companies that put them out. In this past year I have worked on, let's see, Michael Jackson, Dan Foglebird, BLO, Elton John, Olivia Newton-John, Teddy Pendergrast, Lou Rawls. I can keep going on and mentioning a lot of artists that I've worked on this year.

Q. I think that's a fairly complete list.

COMMISSIONER GARCIA: When you have an artist such as Olivia Newton-John, do you still promote in the same way or the fact that she is well known makes it easier or takes care of that?

THE WITNESS: That she's well known, that doesn't mean

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anything. It's still every time they come out with a new record they're coming out of the box with something else. The one before this might have been a stiff. Just because she's a new name doesn't mean anything. Just because she's a big name doesn't mean that she is a winner.

We had the example just recently in New York City with Frank Sinatra. In New York City, he had a big record with the song called "New York, New York." It didn't mean too much over the rest of the country and Sinatra, himself, I don't think he's had a hit -- he might have had a mediocre hit a couple of years back with Irvin Drake's "It was a Very Good Year." But I think the big record before this one he hasn't had any real hits since "My Way" and right before that "Stranger in the Night." But otherwise, being a big name doesn't mean anything.

COMMISSIONER GARCIA: So you do put the same effort regardless?

THE WITNESS: Oh, I'm known as a worker out there. I put my effort -- my effort is in there. Sometimes you win and sometimes you lose but the idea is to get it to the right places, you can't take an Olivia Newton-John record to the same places you would take an SOS Band.

I mean, this is one -- I've been around long enough that I know the type of record and I know where I'm going to go with it. I know the direction I'm going to.

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2 COMMISSIONER GARCIA: Thank you.

3 BY MS. DEAL:

4 Q. Mr. Gayles, you have talked about taking an SOS Band
5 record and you took it to various places. And I won't go over
6 them again including one-stops, radio stations, et cetera.

7 Since you began independently promoting records in
8 1973, have you ever seen a publisher at a radio station?

9 A. Since 1973? A couple of weeks ago, I was sitting
10 with a couple of guys up at WXLO and a lady came in and they --
11 these guys sit around, they're mostly a lot of younger kids
12 out there. And they wound up and they turned around and they
13 said, "Who's that over there?" And I wound up, I said, "It's a
14 lady who used to be a songwriter. She used to come to me many
15 years back with songs. She is now working for Southern Music
16 and her name is Edna Betler. She's the only person I have seen
17 in the last -- in many, many years from a music publishing
18 outfit."

19 Q. What about at influential disco's, the non-show, the
20 non Studio 54 places where you promoted "Take Your Time" and
21 other records since 1973? Have you ever seen a publisher at
22 these locations?

23 A. Never.

24 Q. What about at influential roller rinks?

25 A. You don't see these people around.

Q. What about at record stores such as King Carol's and

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Korvette's and Colony Record stores and Downstairs Records?

A. I don't see any of the music publishers around any more.

Q. What about at one-stops?

A. No.

Q. What about at record pools?

A. They wouldn't even know what a record pool is.

Q. What about at trade papers such as Billboard and Record World and Radio and Records and Cashbox?

A. Well, they know what the magazines are but I still haven't seen any of the publishers at any of those trade papers.

Q. What about at independent distributors?

A. I've never seen them.

Q. Let's turn to another topic. Before we do that, I have one last question on this area. I understand that you just got back from a convention yesterday.

A. Yes. I came in yesterday and I said I couldn't come in until I -- I wanted to stop at the Billboard disco convention because I wanted to hear a keynote speech which was done by a man, a disc jockey out of New York, Frankie Crocker.

Q. Do you consider that to be an important convention?

A. For that type of music, tremendously important.

Q. Did you see any publishers there?

A. None.

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Q. Let's now turn to another topic. You have testified about independent promotion. Did you do promotion before 1973?

A. Sure. I worked for many record companies. I started work for record companies, for record manufacturers in 1957. I worked for Jubilee. I worked for Mainstream. I worked with 20th Century. But I mainly worked for Atlantic Records.

Q. Can you give the Tribunal a better idea of the kind of lable and the kind of work you did for Atlantic in those days?

A. Well, Atlantic Records in 1965 was a small company. If I remember right, that was the first year they finally emerged and looked as if they were going to be the big record company. They did \$8 million, I think, in 1965 when I went to work for them which was twice as much as they did in 1964.

And let's call it a small company. And everybody kind of worked together. I mean, where I worked together with -- I mean, you'd sit with Neshui Ertegun and Jerry Wexler. And, in fact, with Neshui Ertegun I convinced him at that time -- because I was a firm believer that FM radio was going to come in and we had a pretty good jazz line in those days. And mostly all the record companies -- the only stereo FM stations in those days were the ones that were playing jazz.

And I got Neshui, I convinced him for us to take a cut out of an LP and I said, "Neshui, you know what we have to do here. Let's take these deejay records and send them out,

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1 especially with jazz records, we'll send them out to these FM
2 stations and knowing disc jockeys where they were playing the
3 LP's and if they were playing the LP's which were 33 1/3, -if we
4 sent a deejay out in '45, most of those guys never would have
5 been changing speeds or they wouldn't get involved.

6 So I said, "Neshui, we must put these things out in
7 33 1/3 so the disc jockeys will not have to change speeds."

8 Q So you cherry picked tunes from Atlantic Records and
9 put them onto 33 1/3 stereo lables and sent those out as pro-
10 motional copies?

11 A Yes. Atlantic Records was the first one I was sending
12 records out in stereo, deejay records.

13 Q Was your strategy successful?

14 A In this case it was. It turned out to be pretty
15 successful. We started there -- I had done it previously at
16 Mainstream Records, too, but more or less it was just a hit and
17 miss proposition with Mainstream. I wasn't there too long. I
18 worked for a man called Bobby Share there.

19 But at Atlantic it seemed as if it started to hit
20 true because -- if I remember right, we put out, oh, it was
21 Johnny Mandel's tune which won the Academy Award. A tenor solo
22 which Tony Bennett finally recorded and Peggy Lee finally
23 recorded vocals on it. And Johnny Mandel won an Academy Award.
24 The name just slips me right now.

25 Q Why don't we go on and come back later if you remember

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1 it.

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3 Let's go on to another area of work that you had at
4 Atlantic. Did you play a role in breaking new artists when you
5 were working at Atlantic?

6 A. Atlantic, yes -- I didn't break them. I mean, I
7 helped break them. I remember at Atlantic we took -- Aretha
8 Franklin had been on Columbia Records. Now, she didn't mean
9 anything at Columbia. And then Jerry Wexler signed her for
10 Atlantic Records and we took her in to what we called at that
11 time -- they gave her some solo records to play and that was the
12 beginning of her breaking through to become the Aretha Franklin
13 she is today. And there were some other artists in there.

14 We had the Bee-Gee's; we had Cream; Buffalo Spring-
15 field; Roberta Flack; later on Bette Midler. My second time
16 around, that's when Bette Midler was there.

17 Q. You worked for both record companies as a promoter
18 and have worked later as an independent promoter. Did you use
19 any different promotion methods when you were working for the
20 record companies on salary, for example, than you do today as
21 an independent promoter?

22 A. No. Actually, we're doing the same thing. It's just
23 that my personal contact was with a lot of people and that is
24 helpful. But you're going to the same places. In those years
25 we more or less might have been some nightclubs and cafes. They
have switched over to some discos. We've still got some of the

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nightclubs and some of the cafes out there, lounges.

But basically, today we're more into a radio field than anything else.

Q. You mentioned that you worked on breaking new artists in records when you worked for Atlantic. How did you break a recording by a new artist? For example, what were some of the strategies that you used?

A. Well, in the case of Led Zeppelin which Atlantic had signed Led Zeppelin, I think it was in 1968. Now, we had a man in charge of publicity at that time, Bob Rolands, he was down there. Now, he sent out all his press releases.

Now, on top of that we got together and we put out what we call the white lable. And later on it became a tremendous thing around. All the record companies started using it.

But what we do is -- we used to take an LP and instead of having the regular lable of the record which was either a promotion record or the sale copy, we would send it out as a white lable and we'd either type or write out the titles.

Now, when we sent it out to some of the -- we had a pretty good list of disc jockeys. And at that time we had what we call the BGL list which is the Bill Gavin List. And they were probably the most influential radio stations in the entire country.

Now, as these disc jockeys got the records they would think that they were getting something ahead of time. And as it

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1 turned out, the Led Zepplin was ahead of time and in this case
2 it worked. It became a big thing.

3 Q In addition to white lables, did you also use other
4 strategy?

5 A Well, in 1967 I took the Bee-Gee's out on their first
6 city tours. They had a record called "New York City Mining
7 Disaster" and I remember sitting around and I says, "I'll take
8 them out. Let me take them into Cleveland, Detroit, and Chicago."

9 I would call my promotion man at Seaway Records in
10 Cleveland. I told him, "Get hotel rooms for us." At that time,
11 the Bee-Gee's were five of them. They were the three brothers
12 plus two other musicians. And then they had their manager,
13 Robert Stigworth. And we all went out and I called Cleveland
14 and I said, "Mike, get me a hotel room. I want to run a party."
15 And at that party, just get me every leading disc jockey in
16 Cleveland."

17 "Get me your top retail suppliers, your one-stop
18 people and your newspaper people." And by bringing them around
19 it helped break the record in Cleveland. And I did the same
20 thing in Detroit. From Detroit I went to Chicago. Chicago, some
21 how it didn't happen. The Bee-Gee's never brok through that
22 fast in Chicago as they did in Cleveland and Detroit.

23 But I also remember just recently a guy, Sy Gold who
24 used to work for a distributor in Chicago, he told me, "Juggy,
25 I still remember you. You were sitting on East Walker Drive in

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that big limousine with the Bee-Gee's in the car and people
would go by. They'd take a look at these people and they never
knew who the people were."

1 Q You described something to me called
2 "guerilla warfare". Would you describe that to me?

3 A Well, that was in Atlantic Records. I still
4 think we probably had the best promotion staff of all
5 time at Atlantic Records, and we were all on one floor
6 and we more or less inaugurated what we called guerilla
7 warfare.

8 By guerilla warfare, we take one area, now
9 we take the Southeast. We looked at it to make sure that
10 we cover say, Atlanta, Jacksonville, Miami, and Augusta
11 or Charlotte; and we cover that area. The following
12 week, say, "Let's take four or five cities," and sure
13 enough, we just concentrated on those cities.

14 The following day, guerilla warfare was looked
15 for, let's get into Texas. And we looked to grab Dallas,
16 Houston, right alongside it, we would wind up in Shreveport,
17 Louisiana, and that was what we -- it was a game we used
18 to play among ourselves called guerilla warfare to see how
19 many cities we can take in one day.

20 Q Did you ever in your strategies consider breaking
21 a record in a particular part of the country rather than
22 in another.

23 A Well, again, it was the same thing, it was like
24 with SOS, I knew it had that New York sound to it. The
25 idea was to break it in New York City. From New York

1 City we could send it right into Washington here,
2 right into Washington, and try the East Coast along -- and
3 Miami. We knew one thing. Otherwise, if we had something
4 that had a country feel, we would put together, start
5 around the Baptist belt or another city which somehow
6 country music breaks through is in Minneapolis, Minnesota
7 area.

8 Q If the process of breaking in a new artist any
9 different today than it was when you were working for
10 Atlantic Records?

11 A No. It is not -- I mean, there is no
12 difference here. You are out there breaking the records.

13 Q You talk a lot about using different promotional
14 strategies, now, wide labels, touring, guerilla warfare,
15 breaking a record in a part of the country, to spread
16 the record's popularity out over the country. Have you
17 ever heard that the term "crossover"?

18 A Yes, I certainly did. In fact, I have still got a
19 little letter, a copy of a letter I sent out, and I think
20 I was probably the first one to use the word "crossover";
21 I send a letter out, again, that BGL list, which was
22 sent to everybody at that time for breaking -- to help
23 me cross over a Herbie Mann and a Bobby Dylan record.

24 About a year later, I saw the expression used
25 in Billboard.

lj 6-30

1
2 Q Are crossovers important in the record
3 promotion business?

4 A Yes, very important. The only way -- the only
5 way you can get the full sale and the full value of a record
6 is by crossing it over from one area to the other area.

7 Q During the time when you were promoting records
8 for Atlantic and other record companies between 1957 and
9 1973, did you ever see publisher representatives
10 promoting records at that time?

11 A Oh, yes, I did.

12 Q Up to what point?

13 A I used to do a lot of traveling and I would go
14 into various cities and I would see representatives. There
15 was a man called Jack Spratts that used to -- I am speaking
16 now of mainly New Yorkese. Jack Spratts used to work for
17 Breckman, Vachtel and Kahn, he would be out on the road.

18 I would find a guy, Monroe Golden, or -- he
19 used to work for Hahn's, he was out on the road; or a
20 guy, Lucky Karl, would be working for Southern Music, he
21 would be out on the road. George Finess, who I later
22 worked with at Atlantic Records, he was with BMI in those
23 years, and I would see him out on the road.

24 Q Let's turn to another era now. I understand
25 that you were once a music publishing business. How did
you get the experience necessary to become a music publisher?

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1 A Well, when I started work for Remick in
2 1938, and I started -- I got to know a lot of various
3 artists out there. I knew songwriters, and in fact,
4 Jimmy Van Husen and Sammy Carmon are the ones that
5 convinced a guy called Charlie Warren at Remick Music
6 to give me my first job.

7 And as I worked for Remick, wherever the
8 mouse went, I just went along with him. He moved from
9 Remick. He moved to Morris and Morris and then he moved
10 to Irving Berlin and from -- then later on I went to
11 work for Hahn's and then to Leo Feist.

12 Now, during that period, I got to know a lot
13 of laws. I go back to -- I will say one thing, I don't
14 know them as well as I used to, and I am not as close as
15 I used to be, as I was to him, but in 1938 Frank Sinatra
16 was working the Rustic Cabin over on 9W right across
17 the river, that is when I met him, then. Well, we used
18 to go out to contact him in those days. He worked for a
19 band -- and I got to know the Artie Shaws, the Benny
20 Goodmans, the Peggy Lees, the Woody Hermans, Count Basie,
21 I mean, they all became friends of mine, thru the years.

22 Q When did you start your publishing business?

23 A 1947, '46. I worked with Feist until then.

24 Q What was the name of your publishing --

25 A United Music Corporation. I run it together

1 with Parker and my name was Gayles, my right name was
2 Resnick, his name was Gayle. It was Gayle and Gayles.
3 And he was my partner in the publishing business.

4 Q How long did you own United Music?

5 A Well, I was very active until -- it was an active
6 company until around 1957. And then in '57 he and I, we
7 had a little difference, I used to be -- I had a monkey on
8 my back. I used to love to gamble. And I was a pretty
9 good better and I blew a lot of money and it was affecting
10 some work of mine and he and I just had it out. He went
11 one way and I went the other way. In fact, that is when
12 I went to work for Jerry Blaine of Jubilee Records came to
13 me and asked me -- he had asked me previously to leave
14 Jackie and go to work for Jubilee and I said no good. "I
15 am in the publishing business."

16 And then when we had this run-in, when I had this
17 run-in with my partner, I went to work for Jubilee Records
18 in 1957.

19 Q Did you collapse your publishing company at that
20 time?

21 A No, we didn't, we just -- it just laid dormant.

22 Q Until what date?

23 A Oh, it was dormant until around 1962, I would
24 say.

25 Q Were you a large publishing company?

1 Q Did United Music have yet other copyrights
2 that had similar successes, similar to those that we call
3 "Gold" records today. Or platinum records.

4 A Well, I don't know if we could call them gold,
5 or platinum, they are songs. And as far as I am concerned,
6 all copyrights are gold. But I have a few goodies in
7 there like The Hucklebuck, Somewhere Along the Way,
8 I Won't Cry Any More, or I Could Have Told You, My Lady
9 Loves to Dance, there were quite a few in those days.

10 Q Did your publishing company, United Music,
11 ever make money on records that never made it to gold?

12 A Well, in those days, if you had a single record
13 that sold a million copies, that was a big thing in those
14 days. I had a few of them. But one in particular was
15 Tony Bennett. I remember Mitch Miller was at Columbia
16 Records. He recorded a song of mine which was called
17 Here Comes that Heartache Again. It was on the back of
18 -- well, anyway, Mitch called me and he says, "Now, look,
19 Juggy, I am putting Tony's record out. You are on the
20 back of a big smash. So you can just sit back and collect."
21 And the other side was Rags to Riches, which -- that was
22 a big winner, and I was just on the other side of it.
23 And I took a free ride.

24 Q By the backside, I assume you mean the flip side
25 of a record?

1 A Well, yes, the flip side of a record. I got
2 the same two cents that they got for the other side.

3 Q Is it typical for publishers to get the same
4 kind of free ride you got, a hit today?

5 A Well, today it is easier to get a free ride than
6 it was in those years, because in those years, you didn't
7 have too many -- you had a single which would sell a
8 million records, today, you find LPs that sell quite a few
9 million records. Now, you can catch an LP with one hit
10 in that, and there might be -- and the LP might have
11 8-10 sdies in there.

12 Now, the other seven to nine sides, they are
13 getting a free ride.

14 Q By free ride, do you mean that you didn't have
15 to spend any thing on promotion when you were on the flip
16 side of the hit?

17 A No, we didn't haveto work it at all, in fact,
18 Mitch -- getting back to Mitch Miller, Mitch just, he says,
19 "Look, get out there, you -- and tell your friends to play
20 the other side, because that is the hit."

21 Q Returning again to your experience as a
22 publisher, how did you promote, what promotional strategies
23 did you use when you were a publisher?

24 A Well, we were -- my partner was eventually moved
25 out to California because he was also managing the band

1 Eddie Hayward, and he was out in California and I was
2 in New York City. Now, when we get a record, the first
3 thing we do -- we get 100 or 200 singles and I put -- what
4 I used to do is I used to put them into my car and I get
5 in my car and start traveling around. In those days, on
6 this side of the East -- of the Mississippi, we knew that
7 there were four cities where you can start records.

8 Those four cities were Pittsburg, Cleveland,
9 Detroit, and Cincinatti. When we took that, I would get
10 in my car and I would get in my car and I would start
11 driving through those four cities. I would make a trip,
12 it would -- by the time I would get through I used to go
13 2300 miles on a trip.

14 Q 2300 miles sounds like a lot of time and a
15 fairly costly trip. Does this mean that your publishing
16 company was a costly operation?

17 A Actually it wasn't, because it was a smaller
18 company, we didn't have too many people, I had a girl working
19 with me. And then I had another man at that time, a guy
20 called Harold Leventhal, who did most of the administrating
21 in those years.

22 Q Let's talk more generally about the experience
23 of plugging songs in the 20s, 30s and 40s. I believe you
24 stated that in the 20s, the song plugger would actually
25 get out with a megaphone and -- or the six-day bicycle race

1 -- a dance, someplace, and simply shout his song. What
2 was the song plugger trying to sell in those days?

3 A He was trying to sell his song by getting
4 it known to people. See, in those days, these guys
5 would go around, the main -- I would think that the main
6 revenue came from sheet music. And all he was trying to
7 do was get that -- the sale of sheet music out there.

8 Q And in the 30s, could you state what was the
9 goal of a song plugger in those days?

10 A Well, in those days the idea was to get your
11 songs played on radio.

12 Q And was he interested in promoting records
13 for example?

14 A Well, the records didn't mean that much. And
15 I am speaking in the early 30s, or I should say the -- even
16 the latter 30s, that is when records were first starting
17 to come around. But the main -- the actual main way to
18 get a song started was strictly by radio plugs.

19 Q Where was the music industry centered, for
20 example, in the 30s, in the heyday of radio, before records?

21 A It was strictly, basically it was New York.
22 It had to come out of New York City. Some of the bigger
23 music publishing companies had -- they would have a branch
24 office in Chicago and another one in Los Angeles. But
25 actually everything was coming out of New York City.

1 A No, we were a small publisher but we were a
2 pretty active one, because we worked pretty hard for our
3 records -- for ourselves.

4 Q Why did you start United Music?

5 A I knew it could be successful. That is why
6 I wanted to build some equity. And that is the reason I
7 started it.

8 Q Would you name some of the songs that you helped
9 promote into winners when you plug tunes for publishers?

10 A Well, let me see, starting in '38, You Go To My
11 Head, You Must Have Been A Beautiful Baby, Imagination,
12 this is from the various publishers. Imagination, Atchinson,
13 Topeka and Santa Fe, the Trolley Song, Seems Like Old Times,
14 how many do you want me to mention.

15 Q I think that is enough. Could you name some of
16 United Music's copyrights? For example what was the first
17 song you ever published?

18 A The first song I ever published, Herman Drake
19 and Henry Manners and Jimmy Sherill came in with an adpata-
20 tion of Le Gent Humoresque. And they called it "Mabel,
21 Mabel, Sweet Mabel, Take Your Elbows Off the Table." And
22 at that time, I got Woody Herman to record it and that was
23 the beginning of my publishing.

24 Q Was this record a success?

25 A For that day it was.

1 Q What happened if a song wasn't a success in
2 New York City?

3 A I don't think you stood a chance to get it
4 moving anywhere else, because we had a way of compiling
5 the plugs in those days. And it had to come through --
6 everything had to come through New York City or otherwise
7 it wouldn't come. It wouldn't come at all.

8 Q You stated that there was a way of counting
9 how songs were plugged in those days. Tell us more about
10 how a song's success was judged in the heyday of radio,
11 before records.

12 A Well, in those days, we used to work at the
13 week -- we used to start plugging a record week by week.
14 Now, our plug week would start on Saturday and would go
15 right through the week into Friday night. Now, there is
16 a service in Brooklyn that used to log everything that
17 came through on the New York stations, on three New York
18 stations at that time, which are today the -- CBS, NBC
19 and ABC.

20 In those years, WABC is now CBS, then there was
21 WEAJ which was the red network, and WJZ, which was the blue
22 network, those two belong to NBC. Now, the only way that
23 a song -- a plug would count on the air would be if it was
24 played in New York City during that period, and we had a
25 man called Ed Riggs who in those years, ran every Sunday the

1 New York Inquirer would come out, and there was a sheet,
2 now, the idea was you had to get at least 7 plugs to get
3 on the sheet.

4 Q What did it mean to get on the Inquirer sheet?

5 A It meant that your record -- your song was
6 starting to be played around and that was the only way to
7 make a hit. We used what we called -- all of our music
8 publishers, we used to have what we called "dry" weeks,
9 and the idea was to shoot it into either Number 1 or
10 Number 2, because if you got -- if you became Number 1 or
11 Number 2, you were definitely going to go on the hit parade.

12 Q By "Hit parade" what do you mean?

13 A Well, every Saturday night they had the Lucky
14 Strike Hit Parade.

15 Q Was the Lucky Strike Hit Parade a -- simply a
16 New York City hit parade?

17 A No, it was a national.

18 Q You talk about the New York Inquirer. Did the
19 New York Inquirer slip sheet continue to be the way in which
20 song pluggers knew whether their songs were hits or misses?

21 A Yes, that is the only way we would find out,
22 with the -- I didn't get that complete question. Would
23 you mind repeating that?

24 Q Sure. You talked about the New York Inquirer.
25 Did the Inquirer continue to be the only way in which song

1 pluggers in the late days of radio knew whether their
2 songs were hits or misses?

3 A Well, after the Inquirer, then there was -- the
4 music business had a little breakthrough, performing
5 societies, ASCAP and BMI, and when BMI came in, they brought
6 a professor from NYU, Professor Pieper, and he would more
7 or less weight these plugs to show, because if we had
8 what we call a -- with Ed Riggs on the New York Inquirer,
9 if Jack Benny did a show which was a tremendous show in LA,
10 and perhaps an Edgar Relini, who might have been working
11 in the Picadilly Lounge, and if he came thru with a plug,
12 that little plug that only stayed in New York City, hit
13 meant as much on the New York Inquirer sheet as the Jack
14 Benny plug.

15 But when they started the Piepman sheet, he
16 would weigh the plugs by how many stations each were --
17 being carried on each particular play of the song. So
18 when the new thing came in, and that was called the Piepman
19 sheet. And that is how we rated the songs then.

20 Q What happened to the Piepman sheet after the
21 records became popular?

22 A Well, that went up in smoke too, like everything
23 else. Then -- that is when the trade papers started coming
24 in by listing -- that is when the records really started
25 to break through. And the trade papers started to list the

1 top records in sales and in play, that is how to this day
2 it is the same thing, it is still going on.

3 Q Let's turn to another topic. The Tribunal has
4 heard a lot mentioned about the Brill Building in Tin Pan
5 Alley, and I understand that your live music publishing com-
6 pany's offices were there. Could you describe what it was
7 like to work there?

8 A Well, the Brill Building at that time was more
9 or less considered the Tin Pan Alley. It had been moving
10 up all along and by the time I came around in the 30s, the
11 Brill Building was more or less the center of Tin Pan
12 Alley. And the Brill Building was an exciting building,
13 because we had music publishers on every floor.

14 And you would see the people -- you were in
15 contact continuously, like Frank Sinatra came in, he
16 was in business with a guy called Ben Barton, Bart Music,
17 so Frank would be in that building. Perry Como was in
18 business with a Tommy Wilendo, you would see Perry Como
19 in the building. Tommy Dorsey had an office up on the
20 11th floor, and then they were all the other publishers
21 that were around -- Leo Feist, Miller Music, Mills Music,
22 Buddy Morris' companies, everybody was in that building,
23 and it was -- there was a lot of romance going on in those
24 years around that building. In the Brill building.

25 Q Did stars ever visit your humble publishing

1 Q Oh, sure.

2 We were known -- if nothing else, we were known
3 as -- a couple of guys that always came up with some pretty
4 good songs for singers. And I would have people hanging
5 around. I became very friendly with Tony Bennett in those
6 years. In fact, Steve Lawrence was still going to Thomas
7 Jefferson High School in Brooklyn. He wanted to get into
8 show business. He used to -- he would get through with
9 school at 3:00 or 2:00, whatever time he would get through,
10 he would get on the subway and come up and he would be
11 hanging around the building there.

12 Ironically, Edie Gormet used to be around quite
13 a bit in my office, but he hadn't met her yet. He didn't
14 meet her until he met her on the Steve Allen show later on.

15 Q What happened to Tin Pan Alley?

16 A The Tin Pan Alley that I knew is dead, it is
17 gone.

18 Q Let's return to the more mundane topic of your
19 publishing company. What capital investment did you need
20 to start your publishing company?

21 A Very little.

22 Q What were your administrative costs?

23 A Minimal.

24 Q Was your publishing company successful?

25 A We were considered a pretty successful

1 little company in those days.

2 Q You stated that your publishing company was
3 active until about 1957 and then lay dormant until about
4 1972. Could you tell us more about what happened to the
5 publishing company during that time, for example, did your
6 publishing company lose money during that time?

7 A Oh, no. No, we made money in those days.
8 I was -- I started to get into the record business.
9 And while I was in the record end, the company was laying
10 there. I remember hanging around a place on 54th Street
11 called Allen Dix, and I ran onto a guy called Bernie Low.
12 Who at that time was with Cameo Records. He had a guy
13 called Chubby Checker and he had a tremendous hit with him
14 called The Twist.

15 And I wound up sitting having a drink with Bernie,
16 I says, "Hey Bernie," I says, "What is your next release,"
17 because I knew he made -- in those days, if you had your-
18 self a hit single, the first thing you did, you are putting
19 an LP out, so when he put the LP, he said, "I know you
20 recorded the Hucklebuck, and the LP. What is your next
21 single?"

22 He says, "The Hucklebuck. Force it out." Well,
23 I got on the phone and I called the guy at WIND in Chicago,
24 a guy called Mylo Hamilton. I think he may still be doing
25 the Atlanta Braves games out of Atlanta.

1 I called Mylo, and says, "Mylo, you got to do
2 me a favor."

3 And he said, "What is that?"

4 I says, "Start playing The Hucklebuck." I says,
5 "I need it for the next single." I says, "Is it going to
6 be the next single?" I said to him, I says, "Mylo, you
7 keep playing it and it will be the next single."

8 Now, he picked it up and they also had -- Howard
9 Miller was also on that, another disc jockey on that station,
10 it seemed as though WIND started a bang on The Hucklebuck.
11 The next thing I knew, Bernie Low told me, said, "I am
12 getting orders from Milt Salstone," who is an independent
13 distributor of Cameo Records, he says, "I am getting calls
14 from Milt Salstone for The Hucklebuck so I am putting out
15 The Hucklebuck as a single."

16 Well, The Hucklebuck became a hit for the third
17 time and because the record was so hot in those years,
18 they had a lot on every body in the afternoon. He had
19 a lot on the youth. And he -- and since Chubby
20 Checker and Buddy Low were a Philadelphia outfit, he most
21 naturally started to help by playing The Hucklebuck on his
22 show every single day.

23 Now, he carried a lot of stations, and by
24 carrying those stations, I was getting a lot of performance
25 monies. Performance monies started to mount besides the
royalties from the records.

1 Q During the time you were promoting The
2 Hucklebuck part time, you were working for a record company
3 part time --

4 A Yes, I was.

5 Q How much time do you estimate that you spent
6 promoting The Hucklebuck part time?

7 A Not too much; I didn't have to. Once I got
8 started, I -- while I was going from the record company;
9 I was going around the country promoting records for Carlton
10 Records in those days. And I started to throw The
11 Hucklebuck in and I was looking to help myself with it.

12 Q While your publishing company was lying dormant
13 and you were working full time for record companies, were
14 there other songs on which you did no work at all which
15 were recorded and generated income for you during that time?

16 A Yes, there was. Some of the songs that were
17 laying around in the catalog, were hanging around in the
18 catalog, they were good songs. I had a lot of jazz tunes
19 in those years. So all of those things were being recorded
20 as various labels.

21 Q From your experience, do you think a publisher
22 could make money today even if he adopted the exact same
23 strategy you did, that is doing nothing with the catalog,
24 but simply collecting the royalties as they came in?

25 A Yes, I think that there is an old expression

1 that we use in the business that all the solid music
2 publishers, all they have to do is sit on their ASCAP and
3 they are going to keep making money.

4 Q Why?

5 A Because the performance isn't going to bring in
6 money to them. When I worked for Remick in 1938 ASCAP --
7 the entire take from ASCAP was I think \$4,000,000, \$2,000,000
8 to writers, \$2,000,000 to the publishers.

9 Now, the ASCAP as these things are going up, I
10 think the ASCAP take might be, I don't know, \$40,000,000,
11 \$120,000,000. I don't know the exact number. That is
12 besides BMI. But --

13 Q Could --

14 A -- performance monies, that is where that money
15 is coming from.

16 Q Could this catalog also generate mechanical
17 royalties?

18 A Oh, certainly. Certainly.

19 Q Print income?

20 A Oh, sure, we have been in print -- now, look,
21 take another thing called print income. Today, music
22 publishers in general, they are just sitting around and
23 they are not going to print any sheet music or folios
24 unless it is a hit record. But once it is a hit record,
25 then they go into the print business.

1 Q From your experience in music publishing,
2 do you consider publishing to be a risky business?

3 A No, I don't think it is. All you need today is
4 some fairly good chestnuts or evergreens or whatever you
5 want to call them, and if you are loaded with them,
6 you are going to start -- they are going to generate money
7 to you.

8 Q What happens to publishers, for example,
9 when they have these chestnuts and the rest of the business
10 is in a slump?

11 A It doesn't matter, because the songs have to be
12 played on the air. And once the songs are played on the air,
13 they are getting their performance money so even if there is
14 a slowdown in mechanical monies, they are still being
15 performed on the air.

16 Q Mr. Gayles, let's return to the topic of
17 publisher promotional activities and promotional costs.
18 From 1937-38 to '57, you plugged songs for publishers in
19 your own publishing company, United Music?

20 A Right.

21 Q During that time, I would like you to characterize
22 the extent, the nature, the -- how much promotional activities
23 were there by publishers?

24 A They were tremendous. Everything -- at the beginning
25 it was -- the publishers had staffs which they were out
plugging records.

1 You had one professional manager, he was the
2 guy that picked the song, and everybody else in there had
3 to get the song played.

4 Q Did publishers have expenses in these days for
5 promotional activities?

6 A Yes, they had people working on their staffs,
7 I would imagine so.

8 Q From 1957 to the present, you continued promoting
9 songs, first for individual record companies such as Atlantic
10 and now as an independent promoter since 1973. Has the
11 amount and the nature of publisher promotional activities
12 stayed the same from 1957 through 1973 as it was through
13 1938 through 1957?

14 A Well, from 1957, like I mentioned, I used to travel
15 a lot, and I used to see a lot of the people out there, some
16 publisher representatives were out there. Later on as we
17 got into the 60s, I saw the promotional end disappear.

18 Q Who pays for record promotion costs now?

19 A The record companies.

20 Q Are these costs high?

21 A I would think so, because they have got enough
22 people out there working for them. They have got all these
23 record companies. They have a national guy, a regional guy,
24 a regional guy and local guys. And on top of it, we
25 come into -- with the record companies, they are spending

1 money for Installplay by putting out posters, mobiles,
2 the idea is when somebody going into that store, they are
3 looking for some impulse buying, and you need something
4 to catch their eye. They have another thing, tour support,
5 which is another big factor with record companies.

6 Q What about radio and TV ads?

7 A Oh, then there is the buying of time, which
8 is tremendously important on radio and TV.

9 Q Do publishers incur any cost for promoting
10 any records now?

11 A I don't think they are not incurring any costs
12 at all. They are just leaving it right up to the record
13 company.

14 Q They know that the record company is going
15 to look to break through with a hit and they figure they
16 did the job, it was recorded and they are through. They
17 don't offer to do anything else. Now, it is the record
18 publisher that has to make a hit out of it.

1 Q Mr. Zuckerman pointed out on cross
2 examination this morning, pointed to an advertisement from
3 April Blackwood in this month's, I believe, issue of
4 Record World. Do you remember that testimony?

5 A Yes, I do.

6 Q In your opinion do publishers take out advertise-
7 ments in the trade papers?

8 A Any advertisement that they take out is strictly
9 testimonial for themselves.

10 Q Do you consider the ad in this morning's Record
11 World to be a testimony?

12 A Yes. All that they show in their ad.
13 They are showing their address. It is the same thing that
14 if you open up that same book, you will see a big page on
15 Chapel. All you see is Chappell, the address, where they
16 are, in Nashville, or New York, and LA. There is nothing
17 mentioned, anything with the record. It was just a
18 testimonial to themselves.

19 Q Mr. Gayle, you stated that generally publishers
20 don't do promotion for new records any more. And that they
21 leave it up to the record companies. What kind of promotion
22 in your opinion do publishers do nowadays other than promo-
23 ting new records, what kind of functions do they fulfill?

24 A Well, today, I think they are nothing but admini-
25 strators and collectors. Because they are not -- they are
coming in with the singer songwriter and the self contained

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1 groups, and that is what they are shooting for, they
2 are taking all these self contained groups, the easy way
3 to get your song recorded, and it is getting so that I think
4 that you are finding a lot of the self-contained groups
5 and the singer-songwriters are breaking away even from
6 publishers because they are at the point now they are
7 -- there is no sense in me handing my money over to this
8 publisher, this publisher -- all he is doing is collecting
9 my money. He is collecting the monies for me. I might
10 as well collect the monies myself. I don't have to give him
11 50 per cent of everything that I have put into it.

12 Q Do you mean then that the role of the publisher
13 as music publisher has changed since the days you were
14 talking about in the 30s? And 40s?

15 A Oh, it has changed tremendously. The publishers
16 today, they are, they are sitting on their ASCAP -- they
17 have got the catalog and they are going to go out and they
18 are going to -- anything that they are in there just to
19 collect. Basically.

20 Q You talked about this self contained group
21 and the Tribunal has certainly heard a lot about the self
22 contained group, the singer songwriter publisher. What
23 has the growth of the self contained groups meant to the
24 non-singer songwriter that traditional composers, such
25 as the one you talked about, the Jimmy Van Huesens, the

1 Johnny Mercers, et cetera?

2 A Well, these writers don't stand a chance.
3 Johnny Mercer is dead, but this young songwriter doesn't
4 stand too much of a chance to get started any more; they
5 don't nurture them. We used to sit around, look, we used
6 to sit around and we were editors with songwriters, we
7 would sit with the writer, and when he was writing the
8 songs, if you would have the melody in there, you try
9 to get some, well, my grief was more with the melody.

10 When we would come to the lyric, you try to
11 get him to change a line here or a line there, and they
12 are yelling, "This is a great line," we used to say,
13 "Look it is fine. You have got the great line, but
14 let's see if we can get a stronger line."

15 Well, we used to sit with songwriters and try
16 to nurse them -- but the young aspiring songwriter today
17 does not stand a chance out there.

18 Q Why don't some of the self-contained groups
19 use non singer-songwriter material?

20 A Here and there they are going to use them, look
21 -- if the songwriter comes up -- you come up with a master-
22 piece, and if these self contained groups do not record it
23 or a singer songwriter where -- look, even with Barry
24 Manilow, Barry Manilow has recorded some outside songs.
25 But everybody thinks that he wrote -- what was the title --

1 Q I write --

2 A I Write the Songs. He didn't write it. But
3 everybody thinks he wrote it.

4 Q Is the use of outside material by singer-
5 songwriters common or rare in your opinion these days?

6 A Beg your pardon?

7 Q Is the use of outside material by singer-
8 songwriters common or rare?

9 A Very rare. It is rare.

10 Q Why?

11 A Well, why should they -- look, they have got a
12 shop that they are recording songs. Now, there is no need
13 for them to put songs into an album that they didn't write,
14 they would rather put their own in and they know they
15 are getting all the money from those songs.

16 Q Representatives from Chappell and Lowry and Sumac
17 Publishing Company, have testified before the Tribunal about
18 their promotional activities. They talked about how they
19 make demos and how they give advances to struggling songwriters,
20 and hire song pluggers, and even in some cases, invest in
21 expensive recording equipment.

22 Have you ever, for example, been hired to promote
23 a tune by Chapel Music since 1973?

24 A In 1975, they hired me, Buddy Roberts was working
25 for Chapel, he hired me. I think I worked on one song for

1 about four weeks with them. And that was it. I never
2 worked with them again.

3 Q Have you ever been hired as an independent promoted
4 by Sumac Publishing Company?

5 A No, Sumac, they are friends of mine. Susan
6 Mc Closky is a lovely little girl, and I know her very well.
7 I know Jerry very well, Michael Zayer, I don't know that
8 well. But between Jerry and Susan I can run across them
9 and they usually say, Juggy, you are the best. We are
10 going to have something for you. I am still waiting.

11 Q What about Lowry Publishing Company?

12 A Lovely man. I don't -- I never worked for him
13 either.

14 Q Given the testimony from the representatives from
15 Chapel, Sumac, and Lowry, do you think that the Tribunal
16 has been given a representative sample of what the typical
17 music publisher does today?

18 A Look, if you speak about -- I don't think they are
19 the typical music publisher today; they may be doing a few
20 of those things, I am not saying that they don't hire anybody,
21 they may, I have no idea what they are doing. As to what
22 else they are doing out there, well, I don't think it is the
23 -- they are not the complete picture of what is happening in
24 the publishing business today.

25 Q For my last questions, Mr. Gayle, I understand

1 that since your name was announced as a witness for the
2 recording industry, you have been told by some of your
3 former publisher friends that you are a traitor to the
4 publishing industry for appearing on RIAA's side in this
5 proceeding.

6 A Yes, that is true.

7 Q Why then are you risking the loss of some
8 presumably old friends by appearing for the recording
9 industry today?

10 A If I am going to lose those friends, I think if
11 anybody, those people that are saying that to me, they are
12 really the traitors of our business. They are -- they have
13 neglected every solid songwriter that has helped build
14 their companies, previous companies. They are helping the
15 old standards; they are not getting the standards recorded
16 like they used to. They are not out there pitching. They
17 are not out there pitching for any performance monies to
18 bring in for their own -- for the guys that helped build
19 their company. I think that the real traitors are the
20 publishers of today who have neglected the songwriter of
21 yesteryear.

22 Q That concludes my questioning. Thank you.

23 CHAIRMAN BURG: Mr. Gayles, how do you think
24 in the 8 at Acqueduct today?

25 THE WITNESS: Well, I wouldn't even bet

1 you that today is Wednesday. That is the extent of
2 my gambling. I gave that up. And I wouldn't bet you
3 today is Wednesday.

4 MR. GREENMAN: Mr. Gayles, don't worry about
5 being accused of being a traitor. Other singer comments
6 have advised, so I can share your feelings.

7 THE WITNESS: Thank you.

8 MR. COULTER: Mr. Gayles, from what you have
9 said, I think you said the new singer songwriter isn't
10 going to a publisher, he is just doing it himself.

11 THE WITNESS: They are still going to some of
12 the publishers, but after they are with the publisher,
13 after awhile, they see that the publisher is not doing
14 anything for them, so what they do, if they are stuck
15 with a three-year contract, after three years, they are
16 looking to get out and form their own publishing company
17 so they can get their own money. Get the full money.
18 They don't have to get only 50 per cent.

19 MR. COULTER: Why would they go to publishers
20 in the first place?

21 THE WITNESS: Well, if you look at the trades,
22 you know, to me it was a funniest thing in the world. I
23 looked at a trade. I saw them sign a manager. I saw a
24 music company signing a manager that for the next 3, the
25 next 2 years he is supposed to bring in 5 or 6 self contained

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1 groups to the publisher.

2 Now, you are signing a manager to go find material
3 here, so you are going to find a self contained singer
4 songwriter or a self contained group to bring to a publisher
5 so a publisher can publish their music. They are not going
6 out hunting. They are sending managers out to find them
7 now. Did I answer your question?

8 MR. COULTER: Well, in a way you provided
9 some information, but I was -- why would the singer
10 songwriter go to a publisher in the first place?

11 Why doesn't he go to the record company and --

12 THE WITNESS: Well, it is tough to break through.
13 It is tough to break through, see, I -- there used to be a
14 time when we had -- I am talking now the old music publishing
15 days, where we had staffs, we used to send guys, I used to
16 go to -- I didn't have a big staff, but I used to be a
17 pretty good hustler out there. I would go to the record
18 companies myself. I know -- I would go to Mitch Miller,
19 who is at CBS Records in those days, to try to get a record
20 with him. I would go to a Joe Palton, who I later on
21 worked for him, but when he was at RCA, I would go to RCA
22 to try to get him.

23 But the writers haven't got the entree. So they
24 think they are going to a publisher. Now, the publisher
25 is doing -- he is trying to knock on somebody's door. The

1 business has been changing completely. There are new
2 guys coming in, and the writer thinks -- I know, writers
3 come to me and say, "Look -- I have a song published."

4 "What do you mean, you had it published?"

5 "Oh, I gave it to a publisher."

6 "Well, what did the publisher do with it?"

7 It is just laying there. There is nothing that the
8 publisher is doing. They are signing songs. Figuring,
9 well, okay, we will -- I know I used to sign -- listen to
10 a song. I used to give my songs back to writers if I
11 didn't do anything for them. Today, publishers aren't
12 giving it back to writers, they are just taking them and
13 holding them.

14 MR. COULTER: Are you saying it will be better
15 if a writer just went to a record company?

16 THE WITNESS: You have got to remember one thing.
17 Today, record companies have their own publishing companies.
18 So if a writer has got some brains, he will go to a
19 publisher which is owned by a record company. He stands
20 a better shot at getting it into a record company than an
21 outside company.

22 MR. COULTER: Are more writers doing that?

23 THE WITNESS: I don't know. I can't answer you.

24 MR. COULTER: I guess -- if more singer-songwriters
25 are becoming their own publishers after their three year

1 contract whatever it is, are more songwriters going to
2 publishers now than they used to?

3 THE WITNESS: I don't know. I wish I were
4 in the publishing business again. And someday, I hope,
5 maybe after this hearing, some publisher would back me.
6 I will show him how to make money.

7 MR. COULTER: Okay. If -- now, you say that
8 after a person is established, the three years, they
9 become their own publisher --

10 THE WITNESS: Now, you are speaking about
11 something --

12 MR. COULTER: Yes, right. After that they start
13 out with one publisher and they become a self contained
14 group.

15 THE WITNESS: They were a self contained group
16 before they even signed with the publisher.

17 MR. COULTER: But after their -- but then they
18 become their own publisher.

19 THE WITNESS: Yes. They see the money is coming in.

20 MR. COULTER: And obviously until they become
21 successful, they are not making that much money.

22 What -- are publishers making their money, at
23 least from what your understanding is, more from their own
24 catalog than from the singers that are coming on the line?

25 THE WITNESS: I think they are making their money

1 today from the new singers songwriter and self contained
2 groups. I would think that a lot of that money is coming
3 from those particular recordings, that are being made
4 by the newer artists, by the newer writers coming in.

5 MR. COULTER: Why?

6 THE WITNESS: Because they're the ones that
7 are on record.

8 MR. COULTER: No, but I thought they were their
9 own publishers now.

10 THE WITNESS: No, until they become their own
11 publisher, but when they come in, see, the publisher
12 usually signs them if they are a self contained group
13 or a singer songwriter. They work out a deal with them,
14 look, I will publish your songs. And in the meantime they
15 are taking all the songs that are being recorded by that
16 particular group and they are getting 50 per cent of the
17 monies.

18 MR. COULTER: All right, that doesn't happen,
19 though, once the group becomes its own publisher?

20 THE WITNESS: Once they become their own publisher,
21 they are collecting all the money themselves. They may
22 have somebody doing some administrative work. Not for 50
23 per cent, for a lot less.

24 MR. COULTER: Thank you.

25 CHAIRMAN BURG: Let us recess.

1 MR. ZUCKERMAN: Madam Chairman, we are not going
2 to have any questions for Mr. Gayles.

3 MR. GREENMAN: Nor are we.

4 CHAIRMAN BURG: Let's recess anyway before
5 we get back to redirect.

6 (Whereupon, a short recess was taken.)

Tape 8

7 CHAIRMAN BURG: That ends the recess and it
8 begins the adjournment, unless there are any housecleaning
9 matters that need to be brought up.

10 All right, thank you.

11 (Whereupon, at 2:50 p.m., the hearing was
12 adjourned.)